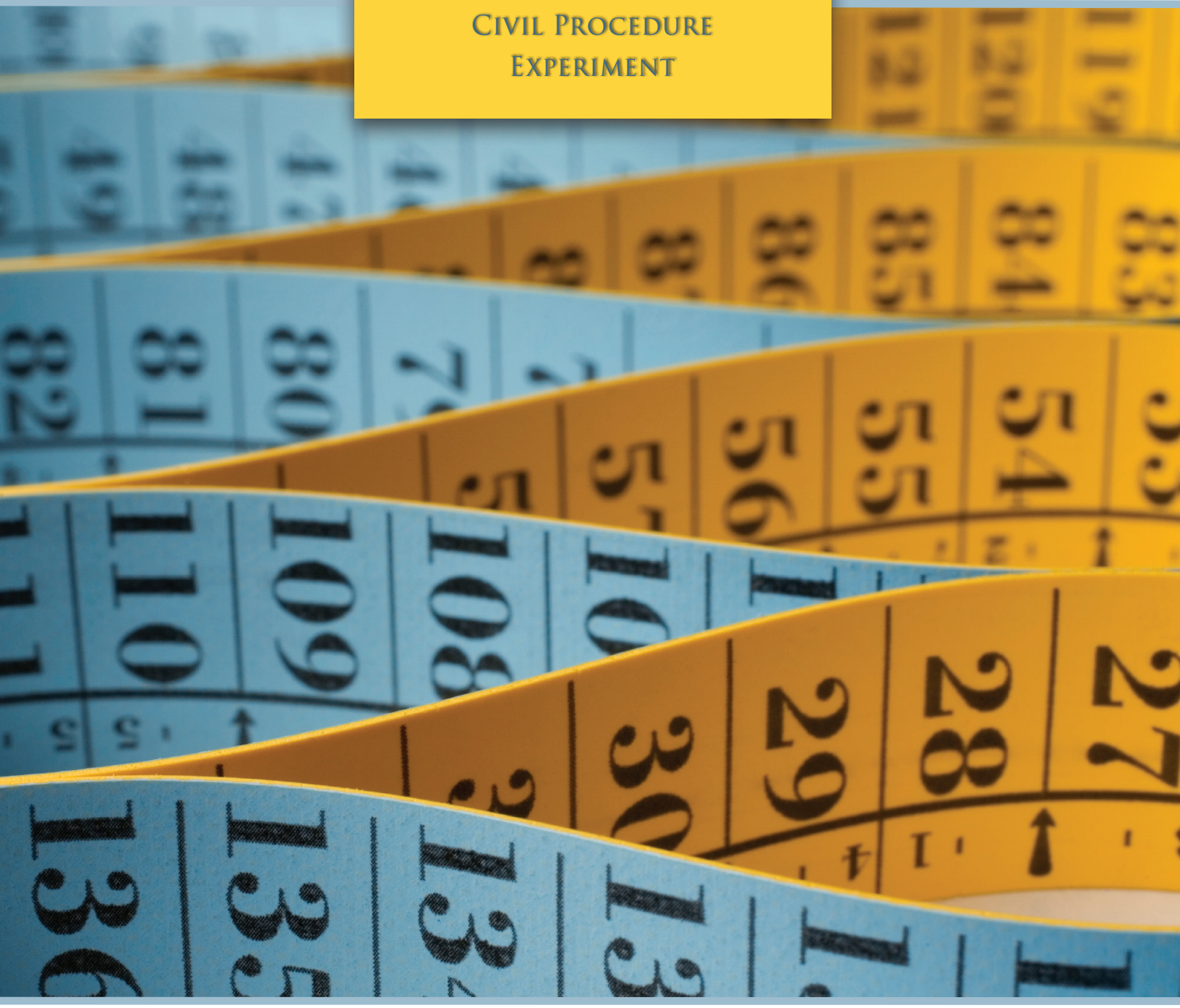
Measuring Rule 16.1:

Colorado's Simplified Civil Procedure Experiment



RULE ONE INITIATIVE

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MEASURING RULE 16.1: COLORADO'S SIMPLIFIED CIVIL PROCEDURE EXPERIMENT

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IAALS, the Institute for the Advancement of the American Legal System, is a national independent research center at the University of Denver dedicated to continuous improvement of the process and culture of the civil justice system. By leveraging a unique blend of empirical and legal research, innovative solutions, broad-based collaboration, communications, and ongoing measurement in strategically selected, high-impact areas, IAALS is empowering others with the knowledge, models, and will to advance a more accessible, efficient, and accountable civil justice system.

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Rule One is an initiative of IAALS dedicated to advancing empirically informed models to promote greater accessibility, efficiency, and accountability in the civil justice system. Through comprehensive analysis of existing practices and the collaborative development of recommended models, *Rule One Initiative* empowers, encourages, and enables continuous improvement in the civil justice process.

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I. EXECUTIVE SUMMARY

Over eight years ago, the Colorado Supreme Court put in place a new pretrial procedure for district court actions involving claims of $100,000 or less between any two parties. The idea behind Colorado Rule of Civil Procedure 16.1 ("Rule 16.1") was to provide a simpler process for relatively small cases, with more extensive disclosures and essentially no discovery followed by a more expedited trial. It is an optional procedure, with a corresponding cap on recovery. As interest in streamlined pretrial procedures, case differentiation, and voluntary processes grows, it is important to examine one such rule that has been in place for some time. Through this evaluation, IAALS, the Institute for the Advancement of the American Legal System at the University of Denver, attempts to answer the question: What has happened with Rule 16.1 in Colorado?

Rule 16.1 is intended to be the default procedure, but any party may opt out and the case will proceed under the standard pretrial process. How often, and in what circumstances, is Rule 16.1 used?

IAALS compiled and analyzed docket data from a sample of cases closed in 2010, and conducted in-depth interviews with attorneys and judges in July 2012.

- It is the general impression of the bench and bar that the procedure is not regularly used. In fact, the parties did not opt out in 62% of studied cases, and Rule 16.1 thus applied to the majority of potentially eligible cases.

- However, 70% of the Rule 16.1 cases were resolved—dropped, settled, closed by the court, or default judgment entered—without any appearance by the defendant(s) in the case. Thus, it would be an overstatement to say that the rule actually impacted a majority of cases. Where the plaintiff did not opt out of Rule 16.1 but there was no appearance by the defendant(s), the provisions of the simplified procedure were not invoked. In fact, fewer than 20% of all studied cases used Rule 16.1 *and* had any level of defendant participation.

- Rule 16.1 cases were overwhelmingly consumer credit cases (i.e., debt collection on credit card or revolving credit account) or other straightforward contract cases (e.g., breach of promissory note on a vehicle or house) with fixed or liquidated damages.

- Rule 16.1 cases tended to have relatively few parties, and as the number of parties increased, so did the likelihood that a party opted out of the procedure.

- Attorneys regularly opt out of Rule 16.1. Rule 16.1 was used in only 30% of studied cases in which all parties had representation, while the rate of use increased substantially in cases with at least one pro se party and cases in which the defendant(s) never appeared. Only about 15% of Rule 16.1 cases had all parties represented by counsel. Attorneys interviewed reported that they opt out because of the extent to which the rule ties their hands, both with respect to discovery and with respect to the ultimate damage recovery.

- Judges interviewed reported having very little contact with Rule 16.1 cases. In any event, they say that they do not manage these cases differently from other cases on the docket. Courts do not appear to give priority to Rule 16.1 cases in setting hearings and trials. In addition, judges generally do not affirmatively suggest that parties should consider Rule 16.1 when they hold pretrial conferences or otherwise.

- Rule 16.1 cases do not appear to have a higher bench trial rate, and none of the Rule 16.1 cases were resolved by a jury trial.

Rule 16.1 was implemented to reduce the time and cost burden of civil litigation in smaller cases. What has been the impact of Rule 16.1 in cases in which it is used?

Using statistical modeling techniques, IAALS compared cases in which Rule 16.1 was used and cases in which the litigants opted out. The analysis was conducted within two groups of cases: 1) actions designated in an initial pilot of Rule 16.1 (before the rule had permanent and statewide application), and 2) cases closed in 2010 in which the defendant(s) appeared.

- There is mixed evidence on whether Rule 16.1 influences the time it takes to resolve a case. While there is some indication of reduced time to resolution, other factors such as the court and the case type appear to play an important role and may thus mask the impact of the procedure.

- There is also mixed evidence on whether Rule 16.1 influences the number of court appearances.

- However, there is strong evidence that Rule 16.1 cases have significantly lower levels of motions filed (66% fewer within the initial pilot project and 37% fewer within the set of cases closed in 2010). This can be used as an indicator of decreased costs both to the litigants and to the court.

- Attorneys and judges were spilt between those who find the Rule 16.1 process to be beneficial and those who find it to be detrimental.

The challenge for those committed to making the civil justice process more accessible and less expensive is to be able to learn from the successes and failures of innovations. What lessons can be learned from the Rule 16.1 experience?

- While there are indications that Rule 16.1 may have some of its intended benefits when used, the optional rule is not frequently used in cases truly invoking the pretrial process.

- Structuring a rule in terms of amount in controversy and capping damages recovery may cause parties to opt out unless the damages are liquidated or certain and considerably less than the cap.

- Attorneys and judges alike expressed that differentiated rules schemes in the same court are difficult to manage. Cases tend to be treated the same irrespective of the applicable rules, or the differentiation becomes a source of annoyance rather than a benefit. There appears to be a preference for a rules scheme that is all-inclusive, with sufficient flexibility to accommodate a process appropriate to each case.

II. INTRODUCTION

In 2004, Colorado implemented the voluntary Rule 16.1 on a statewide basis, with the hope of providing a more efficient route to trial for civil cases involving less than $100,000 in monetary damages. The procedure drew inspiration from criminal procedure, and the idea that disputes can be justly resolved simply by filing the pleadings, disclosing the evidence, and proceeding to disposition.[1] The aim was to increase access to courts by addressing the slow, expensive, and often contentious nature of civil discovery.[2]

This report is the culmination of a comprehensive empirical study of the operation and effects of Rule 16.1. Has the procedure fulfilled its promise? If not, why not? And what lessons can be learned as rulemakers grapple with how best to "secure the just, speedy, and inexpensive determination of every action"?[3] This information will be useful not only for Colorado, but for jurisdictions around the country seeking to improve the civil justice process. It will be particularly valuable for those interested in streamlined pretrial procedures, case differentiation, and voluntary processes.

III. THE SPECIFICS OF RULE 16.1

To make effective use of the data contained in this report, it is important to understand the specifics of Rule 16.1. As this research demonstrates, the intricacies of a procedure can bear on its reception among the bench and bar as much as the overall approach or intent. In common parlance, "the devil is in the details." For ease of reference, the rule is set forth in its entirety in Appendix A.

A. APPLICABILITY

Rule 16.1 applies to civil actions in Colorado district court, the general jurisdiction state trial court.[4] The rule constitutes a separate pretrial "track," which is intended to be the default procedure for civil cases unless: 1) the case has been specifically exempted, or 2) a party timely opts out of the rule. The chart in Figure 1 shows which cases are exempted from Rule 16.1.

In calculating the amount in controversy, the $100,000 ceiling includes attorney fees, penalties, and punitive damages (if any), but excludes interest and costs.[5] In addition, the amount to be considered is between any two parties, rather than the amount sought by or against multiple

Figure 1: Cases Specifically Exempted from Rule 16.1

Amount in Controversy
Any party seeks a monetary judgment from any other party in excess of $100,000
Case Type
Class actions
Domestic relations
Juvenile
Mental health
Probate
Water law
Forcible entry and detainer
Rule 106[1]
Rule 120[1]
"Other similar expedited proceedings"

[1] Richard P. Holme, *Back to the Future--New Rule 16.1: Simplified Procedure for Civil Cases Up to $100,000*, 33 COLO. LAW. 11, 12 (May 2004).
[2] *Id.*; COLO. R. CIV. P. 16.1 (a)(2) (2011).
[3] COLO. R. CIV. P. 1(a).
[4] COLO. CONST. art. VI, §9; COLO. R. CIV. P. 16(a)(1).
[5] COLO. R. CIV. P. 16.1(b)(2), (c). Within the context of Rule 16.1, the term "interest" is intended to encompass pre-judgment and post-judgment interest *on* damages, but not interest sought *as* damages. Holme, *supra* note 1, at 16. Attorney fees count toward the limitation, even when a statute or contract designates recoverable attorney fees as "costs." *Id.* Paralegal charges are properly characterized as attorney fees. *Morris v. Belfor USA Group, Inc.*, 201 P.3d 1253, 1261-63 (Colo. App. 2008).

parties combined.[6] Rule 16.1 also applies to actions seeking purely equitable relief, such as injunctions and declaratory judgments.[7]

Classification of a case is initially the responsibility of the filing party, who submits a civil case cover sheet indicating whether Rule 16.1 applies, and if it does not apply, whether the determination is based on the amount in controversy or type of case.[8] A separate cover sheet must also accompany any subsequent pleading that contains a claim (i.e., amended complaint, counterclaim, cross-claim, or third party complaint). Once any cover sheet indicates that Rule 16.1 does not apply, the case will not proceed under the procedure.

Even if Rule 16.1 applies as indicated on the cover sheet(s), any party may remove the case from the procedure by filing a "notice to elect exclusion" no later than 35 days[9] after the case is "at issue."[10] No explanation is required, although both the litigant and the attorney (if any) must sign the notice.[11]

There is no mechanism or standard for review of the parties' designation of the case, with respect to either the cover sheet(s) or a notice to elect exclusion. As a result, the Rule 16.1 classification, based on an assessment of the case type or the level of damages, is completely within the control of the parties in the first instance.

If the window for electing exclusion closes without any party having done so, the case is generally required to proceed under Rule 16.1. However, at any point prior to trial, a party may file a motion to terminate application of the rule. If the court finds "substantially changed circumstances sufficient to render [application] unfair," as well as good cause for the timing of the motion, the court must grant the motion and Rule 16.1 will no longer apply.

It should also be noted that in actions seeking more than $100,000 against any one party, the parties may file a stipulation to be governed by Rule 16.1. This must be done within 45 days of the at-issue date.[12]

Hence, for all practical purposes, parties may opt in or opt out of Rule 16.1's purview.

B. THE PROCESS

Rule 16.1 essentially replaces discovery mechanisms with extensive disclosures, signed by the disclosing party under oath.[13] The text of the rule summarizes the procedure as follows:

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[6] COLO. R. CIV. P. 16.1(a)(2), (b)(2).
[7] Holme, *supra* note 1, at 16.
[8] COLO. R. CIV. P., Form 1.2 (JDF 601), *available at* http://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=153.
[9] It should be noted that the deadlines in Rule 16.1 were amended effective January 1, 2012, to reflect the new "rule of 7s" for time computation. While the differences are minimal, we describe the 2011 version of the rule, as it was the version applicable to the cases in this evaluation.
[10] A case is deemed to be "at issue" when all parties have been served and all pleadings have been filed, or all defaults or dismissals have been entered against all non-appearing parties. COLO. R. CIV. P. 16(b)(1).
[11] COLO. R. CIV. P., Form 1.3 (JDF 602), *available at* http://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=153.
[12] COLO. R. CIV. P. 16.1(e).
[13] Holme, *supra* note 1, at 21; COLO. R. CIV. P. 16.1(k)(1)(A). Disclosures are required to be signed under oath because they "serve as the principle means of identifying and producing evidence in the case in light of the absence of discovery." Sheila K. Hyatt & Stephen A. Hess, *Rule 16.1 Simplified Procedure for Civil Actions*, West's Colorado Practice Series, 16.1.1 (4th ed., current through the 2010 update).

> This Rule requires early, full disclosure of persons, documents, damages, insurance and experts, and early, detailed disclosure of witnesses' testimony, whose direct trial testimony is then generally limited to that which has been disclosed. Normally, no depositions, interrogatories, document requests or requests for admission are allowed, although examination under C.R.C.P. 34(a)(2) [inspection of real or personal property] and 35 [physical and mental examination of persons] is permitted.[14]

Any party may designate specific information and documentation that the party believes ought to be disclosed.[15] In addition, the rule sets forth case type-specific initial disclosures of routinely expected documents for personal injury and employment actions.[16]

Depositions may be taken only in lieu of trial testimony[17] or for the purpose of obtaining and authenticating documents from a non-party.[18] However, voluntary additional discovery may be conducted if all parties agree, on condition that such discovery cannot be the subject of motions, form the basis for a trial continuance, or constitute recoverable costs.[19]

The trial date is set within 40 days of the at-issue date. The rule specifies that cases proceeding under Rule 16.1 are to be given "early trial settings, hearings on motions, and trials."[20] However, the rule does not mandate assigning priority to Rule 16.1 cases over other cases.

C. Cap On Damages

Under Rule 16.1, recovery from any one party is limited to $100,000, and any verdict in excess will be reduced to that amount.[21] As with the criteria for inclusion in the rule, the $100,000 cap includes attorney fees, penalties, and punitive damages (if any), but excludes interest and costs.[22] There are no restrictions on non-monetary relief.[23] Moreover, the cap does not apply if the parties stipulate to be governed by the rule in an otherwise inapplicable case.[24]

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[14] COLO. R. CIV. P. 16.1(a)(2) (emphasis added); *see, e.g.*, *Berry & Murphy, PC v. Carolina Cas. Ins. Co.*, 586 F.3d 803, 805-806 (10th Cir. 2009) (describing, in a diversity claim for insurance coverage of legal malpractice lawsuit, the state court's preclusion of witnesses and ultimate dismissal of the underlying action for failure to provide disclosures in accordance with CRCP 16.1).
[15] COLO. R. CIV. P. 16.1(k)(1)(B)(iii).
[16] COLO. R. CIV. P. 16.1(k)(1)(B)(i).
[17] COLO. R. CIV. P. 16.1(k)(4). This provision was expected to, *inter alia*, allay the significant costs often incurred in connection with scheduling experts to testify at trial. Holme, *supra* note 1, at 23. The court has the discretion to disallow such depositions. *Thompson v. Thornton*, 198 P.3d 1281, 1284 (Colo. App. 2008).
[18] COLO. R. CIV. P. 16.1(k)(3); *see also Thompson*, *supra* note 18, at 1284 ("depositions generally are not available under the simplified procedure for civil actions").
[19] COLO. R. CIV. P. 16.1(k)(9). Essentially, voluntary discovery "must not involve or require any participation by the court." Holme, *supra* note 1, at 23.
[20] COLO. R. CIV. P. 16.1(i).
[21] COLO. R. CIV. P. 16.1(a)(2), (c).
[22] COLO. R. CIV. P. 16.1(b)(2), (c). Within the context of Rule 16.1, the term "interest" is intended to encompass pre-judgment and post-judgment interest *on* damages, but not interest sought *as* damages. Holme, *supra* note 2, at 16. Attorney fees count toward the limitation, even when a statute or contract designates recoverable attorney fees as "costs." *Id.* Paralegal charges are properly characterized as attorney fees. *Morris v. Belfor USA Group, Inc.*, 201 P.3d 1253, 1261-63 (Colo. App. 2008).
[23] COLO. R. CIV. P. 16.1(k)(4), (5).
[24] COLO. R. CIV. P. 16.1(e).

IV. EVALUATION STRUCTURE

A. APPROACH

In 2010, IAALS conducted a survey of Colorado district court judges and attorneys belonging to the Colorado Bar Association Litigation Section to get a preliminary sense of Rule 16.1's effects. In total, 272 attorneys and 50 district court judges provided feedback on many aspects of Rule 16.1. Importantly, a majority of survey respondents associated the rule with reduced litigation time and cost—in comparison to the standard pre-trial procedure—without a perceived decrease in procedural fairness. There was also some indication that the Rule 16.1 trial rate may be higher than the statewide rate for civil cases, a potential indicator of increased access to trial. However, most respondents believed that the rule is used, at most, only occasionally.

The survey provided the basis for designing a more objective study to verify and quantify the role of Rule 16.1 in practice. Therefore, IAALS sought to build on the survey data through triangulation: the technique of combining three or more research methodologies to study the same phenomenon. By viewing Rule 16.1 from multiple perspectives—both quantitative and qualitative—we can provide a more complete picture of its dimensions, while overcoming some of the weaknesses, intrinsic biases, and methodological issues associated with reliance on a single method. Accordingly, this report concludes three phases of study: 1) the initial survey of attorneys and judges, 2) an examination of court docket data, and 3) in-depth interviews with legal practitioners.[25]

As the initial survey methodology and results are set forth in a separate IAALS report,[26] they will not be repeated here. Rather, the methodology and results of the docket study and in-depth interviews are set forth in detail.

B. GOALS

Overall, this study had two main goals. The first goal was to describe the role that Rule 16.1 has come to play in civil litigation in district court throughout the state of Colorado. How often and under what circumstances is the rule employed? What are the general characteristics of Rule 16.1 cases as compared to cases proceeding under the standard procedure? The second goal was to examine the impact of Rule 16.1 in the cases in which it is used. Has the procedure realized its objective of increasing access to trial by reducing the burden of civil litigation? The answers to these questions provide insight into the most appropriate course of action going forward.

V. DOCKET STUDY

For the docket study, available data were limited to that captured by existing electronic systems for the purpose of daily court operations.[27] Because these archival data were designed to serve a function other than research, they did not provide optimal information. However, content analysis of records kept for another purpose does increase accuracy and reduce built-in bias.

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[25] IAALS received approval from the University of Denver's Institutional Review Board for all aspects of this research.

[26] CORINA GERETY, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., SURVEYS OF THE COLORADO BENCH AND BAR ON COLORADO'S SIMPLIFIED PROCEDURE FOR CIVIL ACTIONS (2010), *available at* http://iaals.du.edu/library/publications/surveys-of-the-colorado-bench-bar.

[27] Specifically, there are two systems: the Eclipse system for case management and the LexisNexis system for filing documents.

To obtain the information necessary to complete this study, IAALS requested database queries from the Colorado State Court Administrator's Office, which yielded lists of cases meeting certain criteria (e.g., case type and date closed). IAALS researchers then reviewed the electronic court records of those cases selected for study.[28] This allowed us to build databases of case-level information for analysis.[29]

A. The Current Role of Rule 16.1: Cases Closed in 2010

With respect to the goal of describing Rule 16.1's role in civil litigation, it was important to examine recent cases, so as not to base findings on outdated information. Conversely, it was important to capture cases that had reached a conclusion, so as not to base findings on incomplete information. Accordingly, IAALS decided to study cases that the court administratively "closed" during the 2010 calendar year.[30]

1. Methodology

a. Sampling: Counties

The target population consisted of all relevant district court civil cases in every Colorado county. There are a total of 64 counties in the state: too many to keep the size of the study manageable. Accordingly, a sampling frame of geographically and demographically dispersed counties was selected for study as shown in Figure 2.

Figure 2: Counties Included in Sample

County (14)	Region (6)	Judicial District (12)
Arapahoe	Denver Metro	18th
Denver	Denver Metro	2nd
Jefferson	Denver Metro	1st
Gilpin	Front Range	1st
Larimer	Front Range	8th
Weld	Front Range	19th
Logan	Eastern Plains	13th
Yuma	Eastern Plains	13th
Otero	Eastern Plains	16th
Clear Creek	South Central	5th
El Paso	South Central	4th
Huerfano	South Central	3rd
Rio Grande	Southwest	12th
Mesa	Northwest	21st

These counties comprise 21% of Colorado's counties. They were selected using a Multistage Proportionate Cluster sampling approach. With available county attributes from 2010 census data, the CHAID segmentation tool[31] was used to understand key drivers of the 2010 civil caseload (number of relevant civil cases filed) in a particular county. The following factors were found to be statistically significant in explaining case numbers: 1) population density (this was the most important factor); 2) household income (in particular, in the $100,000-$149,000 per year range); and 3) occupation type (in particular, "management, business and arts" and "natural resources, construction and maintenance"). By incorporating these factors into the model, we were able to explain 85% of the variation in the number of case filings. This is the amount of insight the model provides over random chance, and this figure is considered strong.[32] Accordingly, by examining the 14 selected counties, the study presents a fairly broad picture of district court civil litigation in Colorado.

[28] IAALS did not have access to information classified as "sealed" or "suppressed."
[29] IAALS thanks the Colorado Judicial Department for its cooperation in allowing access to public court records for the purpose of this study.
[30] Because cases can be closed and reopened multiple times, the cases were selected for study if the *initial* closing event occurred in 2010.
[31] CHAID stands for *Chi*-squared Automatic Interaction Detector. It is one of the oldest decision tree classification methods.
[32] This number is the "gain" or "lift" above the baseline. For example, a 100% gain means that all factors affecting case filings are explained by the model. Here, only 15% of that which explains case filings is not explained.

B. Sampling: Cases

Even after limiting the number of counties, there were more than 14,000 cases in the sampling caseload—the caseload after irrelevant case categories were removed—again, too many for a manageable study.[33] Accordingly, a stratified proportionate sampling approach was used to determine an appropriate sample size to represent each studied county. The sample size estimation was based on "a priori" Power Analysis for a statistical Analysis of Variance test (ANOVA). For a 99% power level and 0.25 effect size,[34] the total number of cases in the sample would need to be 529.

The sample was stratified by the total sampling caseload in each county for the distribution shown in the chart below. The "sample size" column shows the minimum number of cases from each county required for the sample as a whole. However, in counties with fewer than 50 total cases, drawing a census rather than a very small sample reduced sampling error and the effects of potential outliers. In addition, in counties with a higher caseload but with fewer than 50 cases in the sample, the number of studied cases was increased to 50. Accordingly, the "actual review" column shows the actual number of cases studied. For counties with an applicable caseload of less than 50, the number of cases reviewed may not match the sampling caseload because some cases were removed. Please refer to the section that follows for a full description of included and excluded cases.

Figure 3: Cases Included in Sample

County	Region	Sampling Caseload	Sample Size	Actual Review
Arapahoe	Denver Metro	2,596	95	95
Denver	Denver Metro	4,035	148	148
Jefferson	Denver Metro	2,176	80	80
Gilpin	Front Range	31	1	27
Larimer	Front Range	1,068	39	50
Weld	Front Range	981	36	50
Logan	Eastern Plains	47	2	37
Yuma	Eastern Plains	20	1	20
Otero	Eastern Plains	54	2	42
Clear Creek	South Central	36	1	28
El Paso	South Central	2,666	98	98
Huerfano	South Central	43	2	33
Rio Grande	Southwest	41	1	30
Mesa	Northwest	589	22	50
14 Counties	**7 Regions**	**14,383 Cases**	**529 Sample**	**785 Studied**

[33] The exact number calculated was 14,383. While this number excludes irrelevant cases that could be categorically removed prior to review, it includes those cases and case type categories requiring individual review to determine inclusion or exclusion. Please refer to the section below, entitled "Scope: Included and Excluded Cases."

[34] The power level refers to the probability of making a Type I error with the sample (concluding that there is a difference between two populations when in fact there is no difference). Here, the probability of making such an error is $\alpha = 0.01$, and the probability of drawing a correct conclusion from the data in the sample is 0.99 or 99%. The effect size is the amount of change that can be detected. An effect size of 0.25 can detect a change of 25% or more. Because larger samples are required to detect smaller changes, a medium effect size of 0.25 is often recommended.

In total, 785 cases were included in the study. In addition, the actual sampling caseload was smaller than the number indicated above, due to the removal of some cases as explained below. Together, the larger sample and the smaller sampling caseload increase the power/effect size calculation and provide additional strength to the study.[35]

C. Scope: Included and Excluded Cases

As discussed above, case types categorically deemed irrelevant to Rule 16.1 were removed prior to sampling, and thus are not included in the caseload numbers for sampling purposes. Other types of cases were removed after sampling, when individual review made clear that they should not be included in the study. For those counties from which a sample was taken, the removed cases were replaced through random selection of another case. For those counties from which a census was drawn, the removed cases were not replaced. Essentially, there are five categories of cases excluded from the dataset:

1) Cases expressly excluded by the language of Rule 16.1.[36]

2) Cases suggested for exclusion by the author of a Colorado Judicial Branch Planning and Analysis study, completed in 2005, on how parties in civil cases were using Rule 16.1. These cases fall into the following general categories, which do not implicate the provisions of Rule 16.1: 1) non-adversarial proceedings, (e.g., registration of foreign judgments); 2) cases originating within a government entity or an administrative agency (e.g., workers' compensation); 3) cases in the nature of appellate review (e.g., county court appeals); and 4) cases designated as "expedited" proceedings (e.g., public nuisance). All of the case types falling into this category are listed below with "earlier study" provided as the reason for exclusion.[37]

3) Cases similar to those listed in the second category above, which do not implicate the provisions of Rule 16.1, but that were not specifically mentioned in the earlier study. Examples include: contempt citations not brought within the context of a larger case, ex parte motions for the appointment of a receiver, and motions to approve the formation of a special district. All of the case types falling into this category are listed below with "different process" provided as the reason for exclusion.[38]

4) Cases that were transferred between courts or consolidated with other cases. This was done to prevent double counting, as well as to help ensure accurate case analysis and time to disposition calculations.[39]

5) Those cases that exist in the case management systems only as a blank administrative record, the result of a test or conversion from one software program to another.

The following table provides a comprehensive list of excluded case types, as well as the rationale for not including them and the point at which removal occurred.

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[35] The study is stronger than a 99% power level and 0.25 effect size, and also stronger than a 95% power level and 0.20 effect size.

[36] It should be noted that this precludes a determination of the extent to which parties elect to use the rule in otherwise excluded case types. Based on the initial survey results, the number of such cases is believed to be quite small or non-existent.

[37] Leah Rose-Goodwin, *A Preliminary Analysis of How Parties in Civil Cases are Using C.R.C.P. 16.1*, Colorado Judicial Branch Planning and Analysis Division, 15-17 (June 21, 2005).

[38] Such cases were removed only if it was absolutely clear that the case was not subject to the typical pretrial process. Doubts were resolved in favor of inclusion because it would be important to know whether Rule 16.1 was being used under differing interpretations of the rule.

[39] This assumes that there are not certain case types that are transferred or consolidated at higher rates than others.

Figure 4: Cases Excluded from Study

Case Type	Reason for Exclusion	When Removed	In Sampling Caseload?
Administrative test or record conversion	Blank record (5)	If coded as such – prior to sampling; If not coded – after sampling	If coded – No If not coded – Yes
Class action	Expressly excluded (1)	After sampling	Yes
Consolidated with at least one other case	No single court record (4)	If coded as such – prior to sampling; If not coded – after sampling	If coded – No If not coded – Yes
Contempt citation (if sole purpose of the case)	Different process (3)	After sampling	Yes
County court counterclaim	No single court record (4)	If coded as such – prior to sampling; If not coded – after sampling	If coded – No If not coded – Yes
County or municipal appeal	Earlier study (2)	Prior to sampling	No
Distraint warrant	Earlier study (2)	Prior to sampling	No
Domestic relations	Expressly excluded (1)	Prior to sampling	No
Ex parte appointment of receiver (if sole purpose of the case)	Different process (3)	After sampling	Yes
Forcible entry & detainer	Expressly excluded (1)	If coded as such – prior to sampling; If not coded – after sampling	If coded – No If not coded – Yes
Foreign judgment	Earlier study (2)	Prior to sampling	No
Juvenile cases	Expressly excluded (1)	Prior to sampling	No
Mental health cases	Expressly excluded (1)	Prior to sampling	No
Name change	Earlier study (2)	Prior to sampling	No
Other cases not initiated by complaint or petition	Different process (3)	After sampling	Yes
Out of state subpoena	Different process (3)	After sampling	Yes
Perpetuation of testimony	Different process (3)	After sampling	Yes
Probate cases	Expressly excluded (1)	Prior to sampling	No
Public nuisance	Earlier study (2)	Prior to sampling	No
Removed to federal court	No single court record (4)	If coded as such – prior to sampling; If not coded – after sampling	If coded – No If not coded – Yes
Restraining order	Earlier study (2)	Prior to sampling	No
Review of local government	Earlier study (2)	Prior to sampling	No
Rule 106[40]	Expressly excluded (1)	If coded as such – prior to sampling; If not coded – after sampling	If coded – No If not coded – Yes
Rule 120 only[41]	Expressly excluded (1)	If coded as such – prior to sampling; If not coded – after sampling	If coded – No If not coded – Yes
Seal criminal conviction	Earlier study (2)	Prior to sampling	No
Seal criminal record	Earlier study (2)	Prior to sampling	No
Special district	Different process (3)	After sampling	Yes
Substitution of bond	Different process (3)	After sampling	Yes

[40] Rule 106 replaced common law remedial writs in Colorado. COLO. R. CIV. PRO. 106.
[41] Rule 120 sets forth the procedure for authorizing a foreclosure sale under a power of sale contained in an instrument. COLO. R. CIV. PRO. 106.

Case Type	Reason for Exclusion	When Removed	In Sampling Caseload?
Transfer of structured settlement	Different process (3)	After sampling	Yes
Transferred between different courts	No single court record (4)	If coded as such – prior to sampling; If not coded – after sampling	If coded – No If not coded – Yes
Venue changed	No single court record (4)	If coded as such – prior to sampling; If not coded – after sampling	If coded – No If not coded – Yes
Water law	Expressly excluded (1)	Prior to sampling	No
Workman's compensation	Earlier study (2)	Prior to sampling	No
Writ of habeas corpus	Earlier study (2)	Prior to sampling	No

After removal of the categorically excluded cases but before sampling, we removed the lengthiest 10% of cases, based on time to the first closing event, to moderate the effects of outliers. Once sampling was complete, 31 standard court case type categories remained in the study. The following table provides a list of included case types, as well as the portion of each type that appeared in the random sample of studied cases.

Figure 5: Existing Court Case Type Categories Included in Study

Case Type	Number in Sample	Percentage of Studied Cases	Percentage of Sampling Caseload
Breach of contract	145	18.5%	18.1%
Breach of warranty	2	0.3%	0.2%
Condemnation	1	0.1%	0.3%
Confirm arbitration award	3	0.4%	0.3%
Declaratory judgment	13	1.7%	1.9%
Determination of interests	1	0.1%	0.3%
Foreclosure other than Rule 120	22	2.8%	3.1%
Fraud	6	0.8%	0.9%
Goods sold and delivered	15	1.9%	1.8%
Injunctive relief	18	2.3%	2.5%
Landlord-tenant	2	0.3%	0.5%
Lien	1	0.1%	0.1%
Malpractice	8	1.0%	1.3%
Mechanics lien	15	1.9%	1.4%
Money	265	33.8%	30.6%
Negligence	14	1.8%	2.4%
Note	32	4.1%	4.3%
Other	27	3.4%	5.6%
Property damage	2	0.3%	0.3%
Personal injury	28	3.6%	4.5%
Personal injury – motor vehicle	91	11.6%	13.2%
Public utilities commission	0	0.0%	0.0%
Possession	0	0.0%	0.0%
Quiet title – Rule 105	35	4.5%	1.5%
Replevin	33	4.2%	2.8%

Case Type	Number in Sample	Percentage of Studied Cases	Percentage of Sampling Caseload
Sexual harassment	0	0.0%	0.0%
Specific performance	2	0.3%	0.1%
Services rendered	2	0.3%	1.5%
Wrongful death	0	0.0%	0.2%
Wages	2	0.3%	0.3%
Wrongful death – motor vehicle	0	0.0%	0.1%
Total	**785**	**100.0%**	**100.0%**

For purposes of understanding the role of Rule 16.1 in civil litigation, it is important not to put too much emphasis on these standard categories, as the case file reviews revealed a high level of inconsistency in case type coding. This may be attributable, at least in part, to the fact that the categories are not mutually exclusive. In addition, each case is classified by the filing party or attorney, and hence, the classifications may vary considerably across the caseload. For example, cases involving the breach of a promissory note secured by real property were found across the following categories: Contract, Declaratory Judgment, Foreclosure, Injunctive Relief, Money, Note, Other, Rule 105 Quiet Title, and Specific Performance. Likewise, the Money category contains a diversity of cases, ranging from credit card debt collection to construction defect actions.

Due to this variability, meaningful distinctions based on case type required reclassification. IAALS researchers examined the initial complaint in each case in the sample and gave the case a designation based on the contents of the complaint. The following table shows the new case types and the distribution within the sample. There are six broad categories—contract, tort, property, professional relationship, enforcement, and clerical—with the specific breakdown of the actions falling within them listed beneath. This is not an exhaustive list of all potential case types, only those appearing in the sample. The complaint was not available for viewing in a small portion of cases; those cases are listed in a separate row.

Figure 6: IAALS Case Type Categories Included in Sample

Case Type	Number in Sample	Percentage of Sample
TOTAL CONTRACT	**511**	**65.1%**
Breach of lease on personal property (e.g., vehicle, commercial equipment)	12	1.6%
Breach of lease on real property	11	1.4%
Breach of promissory note – secured by personal property (e.g., mobile home, vehicle, business inventory)	61	7.8%
Breach of promissory note – secured by real property (includes monetary judgment, foreclosure, declaratory judgment, deficiency judgment, appointment of receiver, and rescission of foreclosure)	62	7.9%
Breach of promissory note – unsecured (includes breach of settlement agreement)	37	4.7%
Breach of oral contract	2	0.3%
Collections – consumer credit card or revolving credit	204	26.0%
Collections – medical debt	10	1.3%
Declare contract invalid	1	0.1%
Failure to deliver – goods and services	1	0.1%
Failure to pay – goods and services (including professional services)	47	6.0%
Failure to pay – construction work (includes mechanics lien)	33	5.2%
Homeowners association – owner failure to pay assessments	16	2.0%

Case Type	Number in Sample	Percentage of Sample
Homeowners association – association failure to meet obligations	2	0.3%
Insurance coverage dispute (includes declaratory judgment)	12	1.5%
TOTAL TORT	**166**	**21.2%**
Assault	4	0.5%
Construction defect	6	0.8%
Fraud/misappropriation/civil theft	8	1.0%
Medical negligence (includes nursing home care)	8	1.0%
Motor vehicle accident	100	12.7%
Personal injury – dog bite	3	0.4%
Personal injury – premises liability (includes wrongful death)	22	2.8%
Property damage – personal property	2	0.3%
Property damage – real property	8	1.0%
Wrongful action by government employee working in official capacity	5	0.6%
TOTAL PROPERTY	**47**	**6.0%**
Condemnation	1	0.1%
Property dispute	4	0.5%
Real estate transaction dispute	3	0.4%
Spurious lien	4	0.5%
Title to real property (e.g., quiet title, partition)	35	4.5%
TOTAL PROFESSIONAL RELATIONSHIP	**19**	**2.4%**
Employment relationship (includes breach of employment contract, wrongful termination, and wage violations)	11	1.4%
Business relationship (includes dissolution and merger)	8	1.0%
TOTAL ENFORCEMENT	**17**	**2.2%**
Civil forfeiture for criminal activity	1	0.1%
Enforcement action by government agency (zoning, licensing, public consumer protection enforcement)	10	1.3%
Private right of action (communications act violation, consumer protection act violation, election law violation)	5	0.6%
Securities violation	1	0.1%
TOTAL CLERICAL	**9**	**1.1%**
Accounting (includes adjustment after audit)	5	0.6%
Confirm arbitration award	4	0.5%
TOTAL CASES CATEGORIZED	**769**	**98.0%**
Complaint unavailable	16	2.0%
TOTAL SAMPLE	**785**	**100.0%**

Because the sheer number of case types listed above would prove unwieldy for analysis purposes, we generally use the six condensed case types, with the largest categories within those types (consumer credit collection, motor vehicle accident, and title to real property) sometimes separated out for additional insight.

2. Rule 16.1 and the Civil Docket

One of the main goals of the docket study was to determine the extent of Rule 16.1's actual use. Contrary to the general impression of the bench and bar, as evidenced in the survey and interview data, Rule 16.1 was used in a

majority of studied cases (490 of 785, or 62.4%). It is important to note that because we do not have reliable amount-in-controversy data, studied cases include those involving more than $100,000. However, the defendant(s) did not appear in more than two-thirds of Rule 16.1 cases (341 of 489, or 69.7%), and thus the provisions of the simplified pretrial process had the opportunity to actually take effect in less than one-third of those cases.

A. Case Types

The highest rate of use is within all contract actions, where the rule technically applied to nearly 80% of cases. The lowest rate of use is within professional relationship disputes, with only about 15% of such cases proceeding under the simplified procedure. The table below displays the frequencies and proportions for the broad IAALS case types.

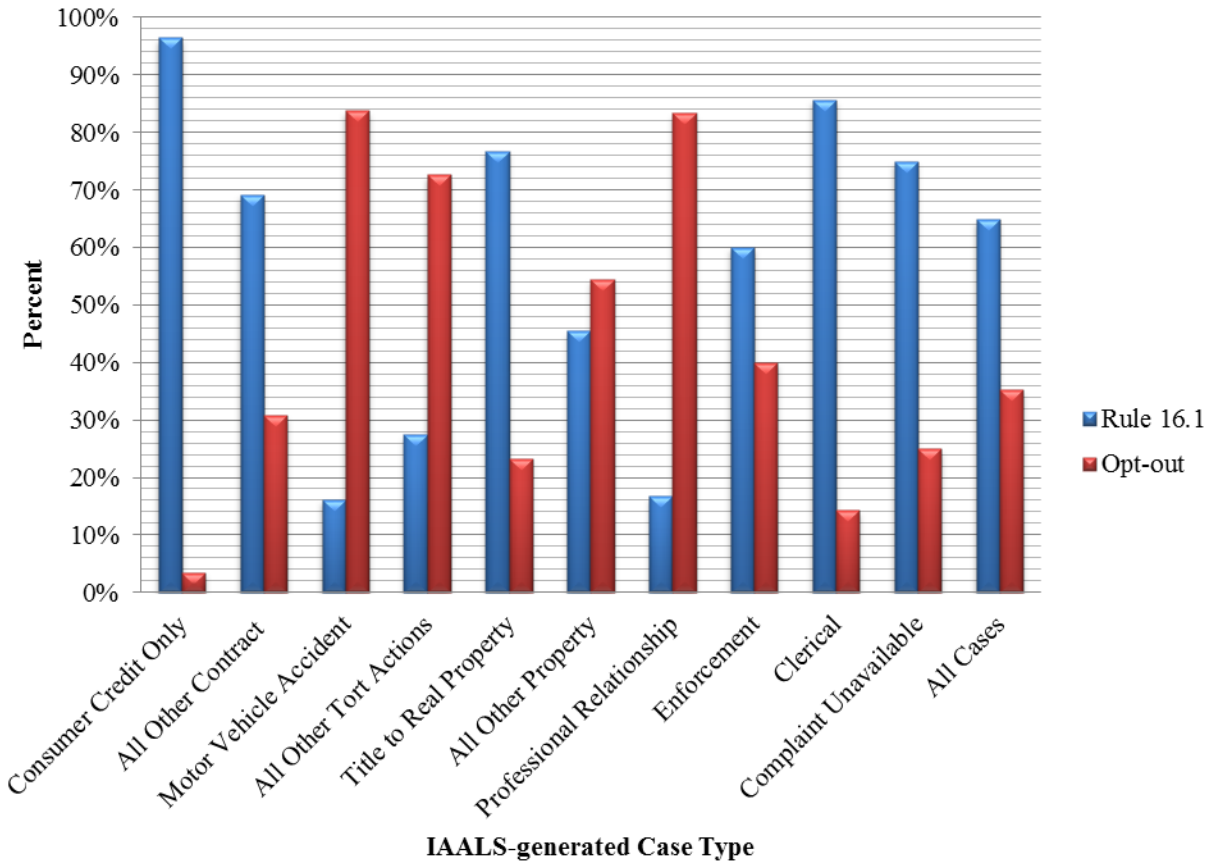
Figure 7: Procedure Used by Case Type

Case Type	Rule 16.1		Opt-out		Unable to Determine		TOTAL	
	n	Percent	n	Percent	n	Percent	n	Percent
CONTRACT	402	78.7%	100	19.6%	9	1.7%	511	100.0%
Consumer Credit Collection Only	*193*	*94.6%*	*7*	*3.4%*	*4*	*2.0%*	*204*	100.0%
All Other Contract Actions	*209*	*68.1%*	*93*	*30.3%*	*5*	*1.6%*	*307*	100.0%
TORT	33	19.9%	128	77.1%	5	3.0%	166	100.0%
Motor Vehicle Accident	*16*	*16.0%*	*83*	*83.0%*	*1*	*1.0%*	*100*	100.0%
All Other Tort Actions	*17*	*25.8%*	*45*	*68.2%*	*4*	*6.1%*	*66*	100.0%
PROPERTY	28	59.6%	13	27.6%	6	12.8%	47	100.0%
Title to Real Property	*23*	*65.7%*	*7*	*20.0%*	*5*	*14.3%*	*35*	100.0%
All Other Property	*5*	*41.7%*	*6*	*50.0%*	*1*	*8.3%*	*12*	100.0%
PROFESSIONAL RELATIONSHIP	3	15.8%	15	78.9%	1	5.3%	19	100.0%
ENFORCEMENT	9	52.9%	6	35.3%	2	11.8%	17	100.0%
CLERICAL	6	66.7%	1	11.1%	2	22.2%	9	100.0%
COMPLAINT UNAVAILABLE	9	56.3%	3	18.8%	4	25.0%	16	100.0%
All Cases	**490**	**62.4%**	**266**	**33.9%**	**29**	**3.7%**	**785**	**100.0%**

Whether Rule 16.1 was applied was not apparent from the court record in 3.7% of cases. For the calculations and descriptions that follow, those 29 cases will be excluded, as they provide little information on the use and efficacy of Rule 16.1.

The following two figures provide a visual depiction of the variability in use of Rule 16.1 when seen through the lens of case type. It is clear from Figure 8 that there are certain case types in which Rule 16.1 is frequently used and others in which there is a strong tendency for parties to opt out.

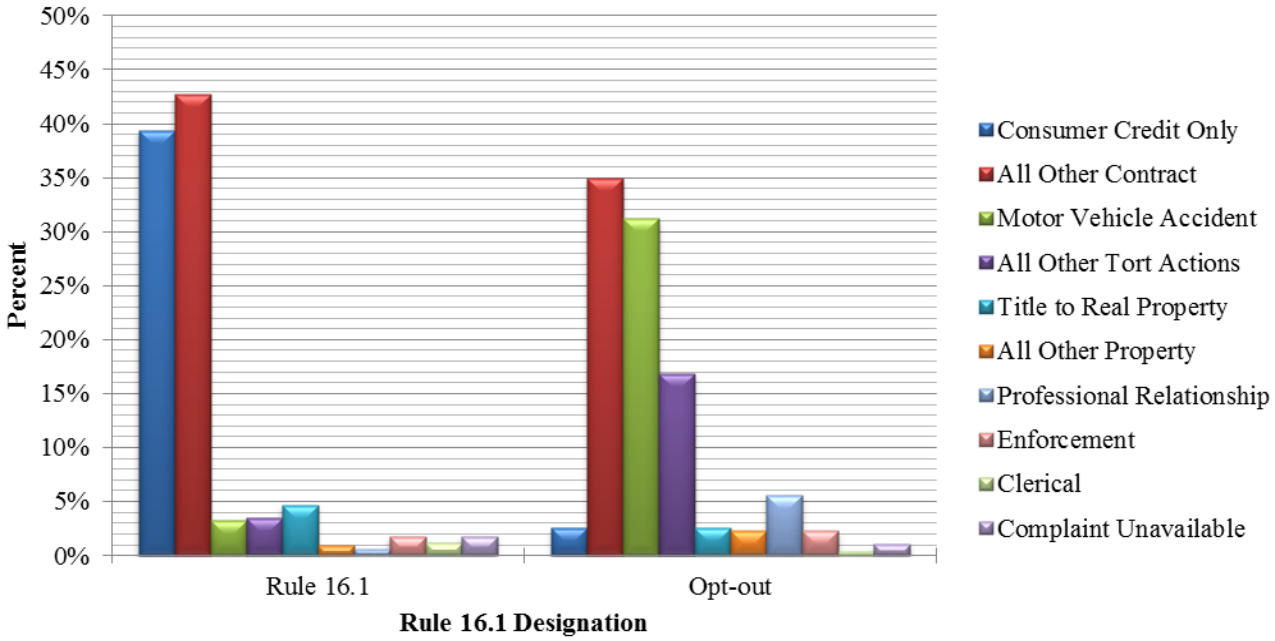
Figure 8: Comparison by Case Type for Rule 16.1 and Opt-Out Rates



Clearly, use of Rule 16.1 is very high in consumer credit collection cases (along with contract cases generally) and quite low in motor vehicle accident cases (along with tort cases generally).

Figure 9 provides information about the case type make-up of each Rule 16.1 designation. Interestingly, the "all other contract" category constituted the largest single case type within both the Rule 16.1 and opt-out categories, while the "consumer credit only" category represented the second largest case type within Rule 16.1 cases but made up one of the smallest proportions of opt-out cases. Both of these categories had the largest number of cases of the sample, but clearly use of Rule 16.1 was much stronger in consumer credit collection cases than in other contract cases.

Figure 9: Case Types Within Each Rule 16.1 Designation



For the 35% of cases that *did not* proceed under Rule 16.1 (266 of 756), more than three-quarters were excluded by the plaintiff through an indication on the cover sheet of the intent to seek more than $100,000. See Figure 10 for the frequencies and proportions of the various ways in which exclusion from Rule 16.1 can occur, considering only non-Rule 16.1 cases.

Figure 10: How Exclusion Occurs In Non-Rule 16.1 Cases

Case Type	Plaintiff Initially Excluded On Cover Sheet–Case Type		Plaintiff Initially Excluded On Cover Sheet–Amount In Controversy		Plaintiff Opted Out After Indicating Rule 16.1 On Cover Sheet		Defendant Opted Out After Plaintiff Indicated Rule 16.1 On Cover Sheet		Total	
	n	Percent	n	Percent	n	Percent	n	Percent	n	Percent
CONTRACT	24	24.0%	64	64.0%	9	9.0%	3	3.0%	100	100%
Consumer Credit Only	*0*	*0.0%*	*3*	*42.9%*	*4*	*57.1%*	*0*	*0.0%*	*7*	100%
All Other Contract	*24*	*25.8%*	*61*	*65.6%*	*5*	*5.4%*	*3*	*3.2%*	*93*	100%
TORT	0	0.0%	121	94.5%	3	2.3%	4	3.1%	128	100%
Motor Vehicle Accident	*0*	*0.0%*	*77*	*92.8%*	*3*	*3.6%*	*3*	*3.6%*	*83*	100%
All Other Tort Actions	*0*	*0.0%*	*44*	*97.8%*	*0*	*0.0%*	*1*	*2.2%*	*45*	100%
PROPERTY	7	53.8%	5	38.5%	1	7.7%	0	0.0%	13	100%
Title to Real Property	*4*	*57.1%*	*2*	*28.6%*	*1*	*14.3%*	*0*	*0.0%*	*7*	100%
All Other Property	*3*	*50.0%*	*3*	*50.0%*	*0*	*0.0%*	*0*	*.0.0%*	*6*	100%
PROF. RELATIONSHIP	1	6.7%	12	80.0%	1	6.7%	1	6.7%	15	100%
ENFORCEMENT	4	66.7%	2	33.3%	0	0.0%	0	0.0%	6	100%
CLERICAL	1	100.0%	0	0.0%	0	0.0%	0	0.0%	1	100%
COMPLAINT UNAVAILABLE	0	0.0%	1	33.3%	0	0.0%	2	66.7%	3	100%
All Cases	**37**	**13.9%**	**205**	**77.1%**	**14**	**5.3%**	**10**	**3.8%**	**266**	**100%**

With respect to exclusion based on case type, there appears to be lingering uncertainty about whether Rule 16.1 applies to certain kinds of actions. The following are very discrete case types in which a portion of the cases proceeded under Rule 16.1, while a portion elected exclusion based on case type.

Figure 11: Case Types Receiving Inconsistent Treatment

Case Type	Proceeded Under Rule 16.1		Excluded Based On Case Type	
	n	Percent	n	Percent
Failure to pay for construction work	18	56.3%	6	18.8%
Title to real property	23	76.7%	4	13.3%
Breach of promissory note secured by real property	41	67.2%	6	9.8%
Breach of promissory note secured by personal property	43	71.7%	9	15.0%
Enforcement action	5	55.6%	3	33.3%

One explanation for the inconsistent treatment may be the interplay with statutory time frames. For example, construction work cases often contain mechanic's lien claims, note cases involving real property often contain foreclosure claims, and note cases secured by personal property often contain replevin claims. Such claims, as well as many enforcement actions, have separate statutory processes but may be combined with claims that proceed under standard civil rules. Rule 16.1 does not provide guidance on these case types or how to handle combined claims. As there were no cases in the sample in which the court changed the designation, similar cases may proceed under a different pretrial process depending upon the plaintiff's interpretation of the rule's applicability.

B. Geography

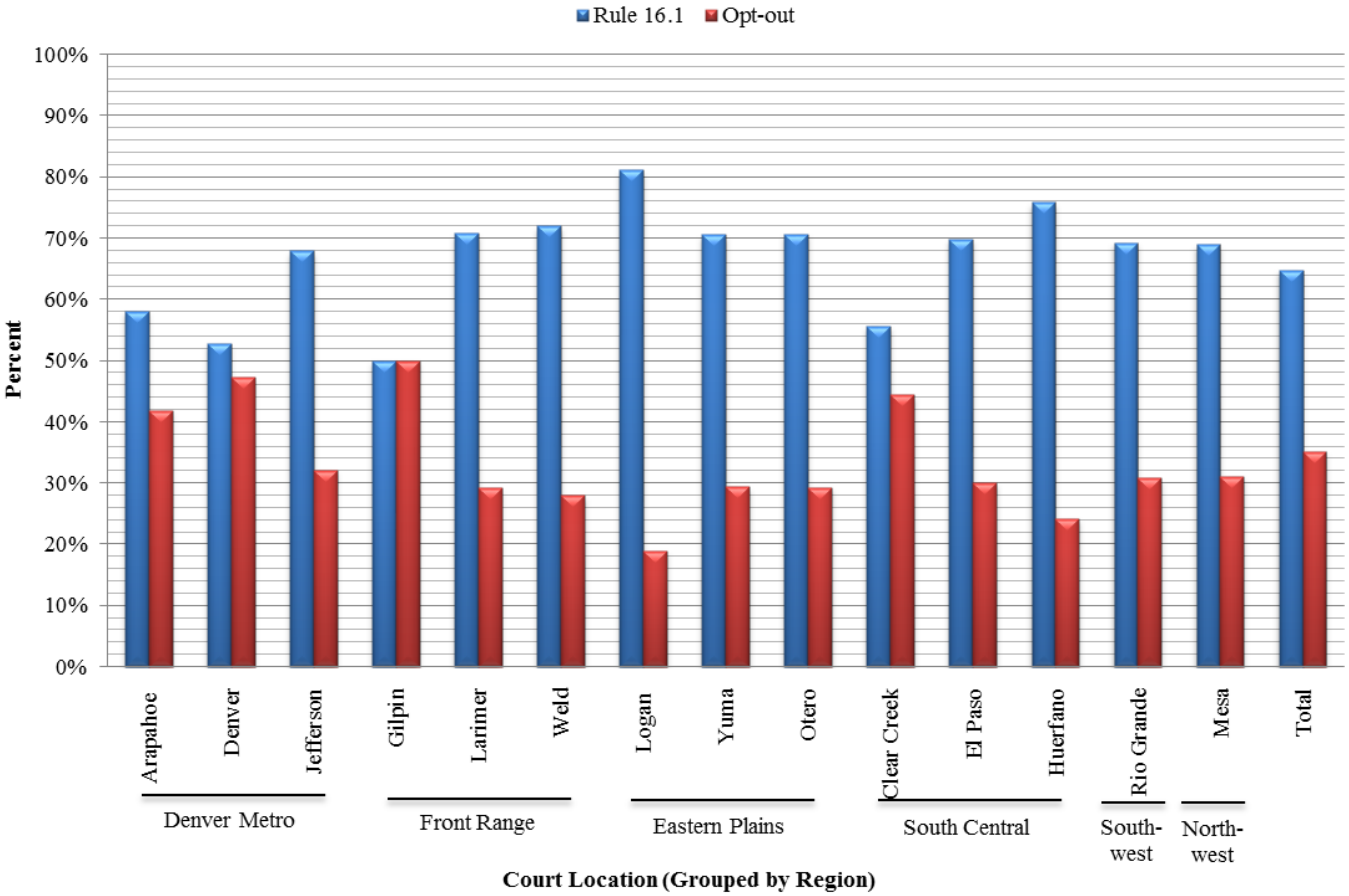
It is also important to consider whether there are any geographical differences in rates of use of Rule 16.1. In fact, Rule 16.1 was used in at least half of studied cases in all counties. The lowest rate was in Gilpin County (50.0%), while the highest rate was in Logan County (81.1%). Because these specific counties are simply a representative sample of all Colorado counties, it is important to consider them by region.

Figures 12 and 13 illustrate the varying degrees of use of Rule 16.1 within each county in the study, grouped by region. There appears to be no clear pattern linking Rule 16.1 designation to region, or to urban and rural areas. It is apparent that cases used Rule 16.1 at a consistently higher rate than they opted out throughout the state, with the sole exception of Gilpin County, where cases proceeded under Rule 16.1 and opted out at equal rates.

Figure 12: Use of Rule 16.1 by Court Location

County	Region	Rule 16.1 Cases		Opt-out Cases		TOTAL	
		n	Percent	n	Percent	n	Percent
Arapahoe	Denver Metro	54	58.1%	39	41.9%	93	100.0%
Denver	Denver Metro	76	52.8%	68	47.2%	144	100.0%
Jefferson	Denver Metro	53	67.9%	25	32.1%	78	100.0%
Gilpin	Front Range	12	50.0%	12	50.0%	24	100.0%
Larimer	Front Range	34	70.8%	14	29.2%	48	100.0%
Weld	Front Range	36	72.0%	14	28.0%	50	100.0%
Logan	Eastern Plains	30	81.1%	7	18.9%	37	100.0%
Yuma	Eastern Plains	12	70.6.%	5	29.4%	17	100.0%
Otero	Eastern Plains	29	70.7%	12	29.3%	41	100.0%
Clear Creek	South Central	15	55.6%	12	44.4%	27	100.0%
El Paso	South Central	65	69.9%	28	30.1%	93	100.0%
Huerfano	South Central	25	75.8%	8	24.2%	33	100.0%
Rio Grande	Southwest	18	69.2%	8	30.8%	26	100.0%
Mesa	Northwest	31	68.9%	14	31.1%	45	100.0%
14 Counties	**7 Regions**	**490**	**64.8%**	**266**	**35.2%**	**756**	**100.0%**

Figure 13: Rule 16.1 Designation Within Each Court Location



3. Characteristics of Rule 16.1 Cases: Parties

A. Parties

1. Number of Parties

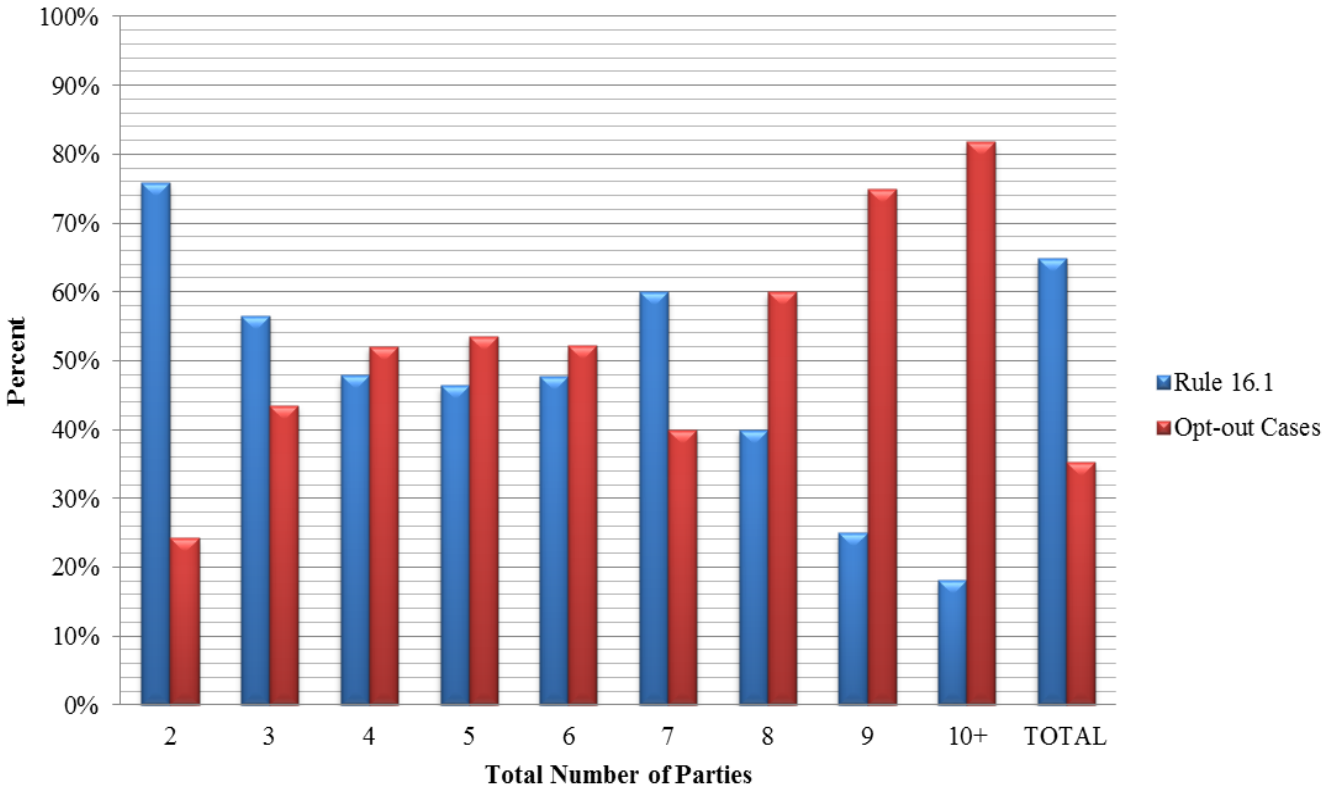
One factor to consider is whether use of Rule 16.1 is associated with the number of parties in a case. As shown in the figure below, the apparent trend is that the fewer the total number of parties in a given case, the more likely the case will proceed under Rule 16.1. Conversely, as the number of parties increases, the likelihood of using Rule 16.1 tends to decrease. This could be due to the increasing complexity of the cases as more parties are added. Alternatively, the heightened tendency to exclude as the number of parties increases may be a function of the concomitant increased number of opportunities to opt out. It should be noted that Rule 16.1 was not used at all in cases with 15 or more parties.

Figure 14: Use of Rule 16.1 by Number of Parties

Total Number of Parties	Rule 16.1		Opt-out Cases		TOTAL	
	n	Percent	n	Percent	n	Percent
2	314	75.8%	100	24.2%	414	100.0%
3	104	56.5%	80	43.5%	184	100.0%
4	34	47.9%	37	52.1%	71	100.0%
5	13	46.4%	15	53.6%	28	100.0%
6	11	47.8%	12	52.2%	23	100.0%
7	9	60.0%	6	40.0%	15	100.0%
8	2	40.0%	3	60.0%	5	100.0%
9	1	25.0%	3	75.0%	4	100.0%
10+	2	18.2%	9	81.8%	11	100.0%
TOTAL	**490**	**64.8**	**266**	**35.2%**	**756**	**100.0%**

Figure 15 provides a visual display of the rate of use and non-use of Rule 16.1 by total number of parties. There is a distinct general pattern. Interestingly, no similar patterns were found upon considering the number of plaintiffs and the number of defendants separately. This may be due to the low proportion of cases with more than two plaintiffs (2.5%) or more than five defendants (3.8%).

Figure 15: Rule 16.1 Designation for Total Number of Parties



II. Representation of Parties

Another consideration with respect to the parties is whether having attorney representation is associated with any difference in the rate of use of Rule 16.1. Because each case in the sample had a different combination of plaintiffs and defendants with varying levels of representation on each side, we created three categories of cases for ease of analysis: 1) all parties represented; 2) at least one pro se party on either side; and 3) none of the defendants appeared in the action. Figure 16 provides the Rule 16.1 designation for these categories. Notably, the defendant(s) did not appear in the majority of all cases (401 of 753, or 53.3%). In addition, this is the category with the highest rate of Rule 16.1 designated cases, followed by cases with a pro se party. Less than one-third of cases with attorney representation for all parties used Rule 16.1.

Figure 16: Use of Rule 16.1 by Representation Categories

Representation Type	Rule 16.1		Opt-out		TOTAL	
	n	Percent	n	Percent	n	Percent
All parties represented	76	30.2%	176	69.8%	252	100.0%
At least one pro se party on either side	72	72.0%	28	28.0%	100	100.0%
Defendant(s) never entered into case	341	85.0%	60	15.0%	401	100.0%
TOTAL	**489**	**64.9%**	**264**	**35.1%**	**753**[42]	**100.0%**

[42] Three cases in the sample had parties that were listed without representation, but were not designated as pro se. These cases were removed for the purpose of examining party representation.

Stated differently, only about 15% of Rule 16.1 cases (76 of 489) had all parties represented by counsel. The remaining 85% of Rule 16.1 cases had at least one pro se party (72 of 489, or 14.7%) or non-appearing defendant(s) (341 of 489, or 69.7%). Due to the high portion of Rule 16.1 cases with non-appearing defendant(s), and thus a resolution before the provisions of the rule could take effect, the simplified procedure had the opportunity to impact only about one in five cases studied (148 of 753, or 19.7%).

B. Resolution

We define resolution as the event that provided a court decision on the status of every substantive claim at the trial level (e.g., dismissal or judgment). Here, we look at the associations between use of Rule 16.1 and case resolution. It is important to remember that the data described below are merely descriptive of the cases and do not speak to whether Rule 16.1 has an effect on how and when cases are resolved.

1. Method of Resolution

For each method of resolution, the figure below shows the portion of cases that proceeded under Rule 16.1, from largest to smallest. Within the sample, 37% of cases were resolved by default judgment and 33% were resolved by settlement, for a total of 70% of cases (532 of 756). Of the cases resolved by default judgment, 90% were Rule 16.1 cases, while only 37% of cases that ultimately settled used Rule 16.1. It is also notable that no Rule 16.1 cases were tried by a jury.

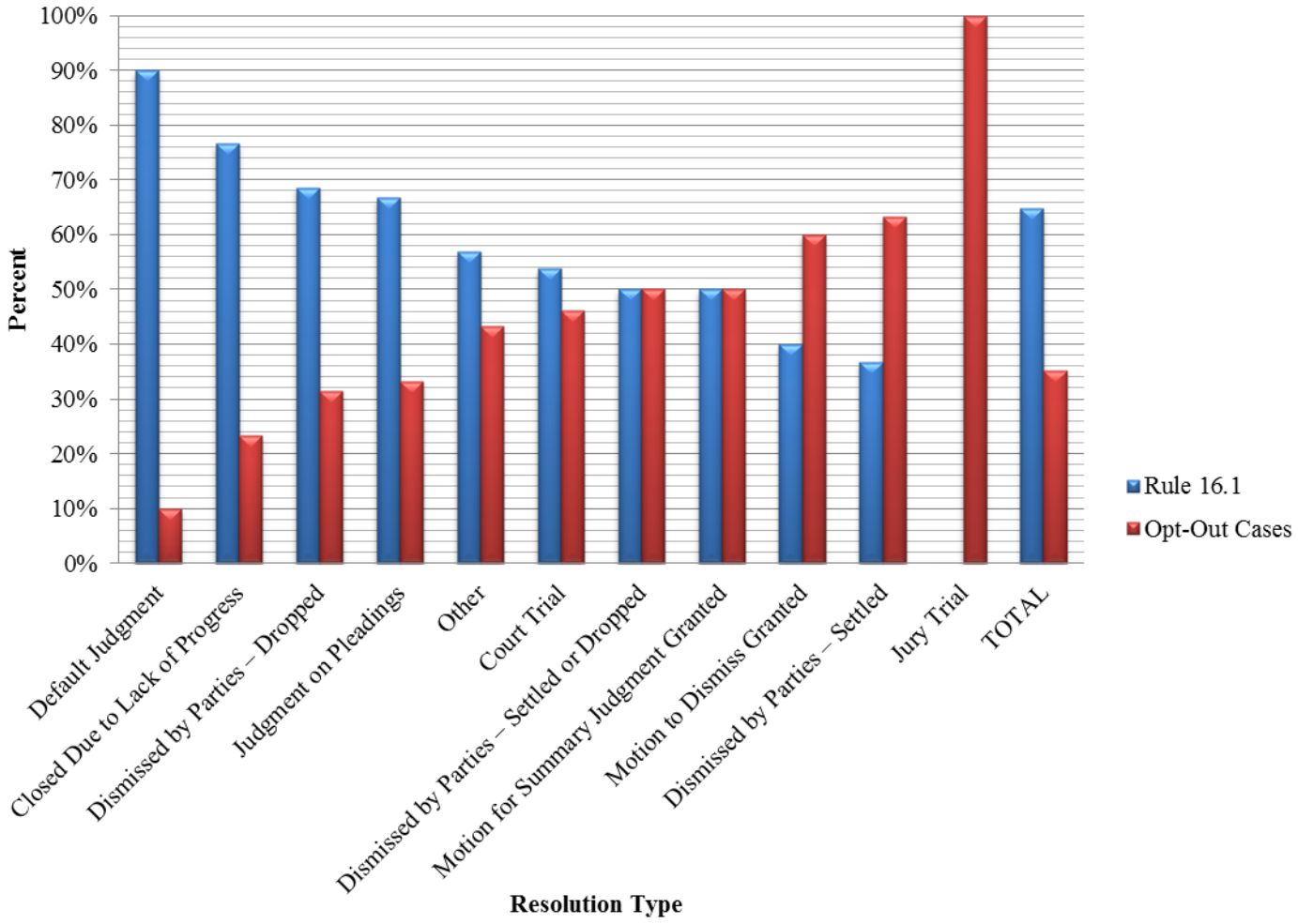
Figure 17: Use of Rule 16.1 by Resolution Method

Resolution Type	Rule 16.1		Opt-Out Cases		TOTAL	
	n	Percent	n	Percent	n	Percent
Default Judgment	254	90.0%	28	10.0%	282	100.0%
Closed Due to Lack of Progress	36	76.6%	11	23.4%	47	100.0%
Dismissed by Parties – Dropped	59	68.6%	27	31.4%	86	100.0%
Judgment on Pleadings	8	66.7%	4	33.3%	12	100.0%
Other[43]	21	56.8%	16	43.2%	37	100.0%
Court Trial	7	53.8%	6	46.2%	13	100.0%
Dismissed by Parties – Settled or Dropped[44]	2	50.0%	2	50.0%	4	100.0%
Motion for Summary Judgment Granted	9	50.0%	9	50.0%	18	100.0%
Motion to Dismiss Granted	2	40.0%	3	60.0%	5	100.0%
Dismissed by Parties – Settled	92	36.7%	159	63.3%	251	100.0%
Jury Trial	0	0.0%	1	100.0%	1	100.0%
TOTAL	**490**	**64.8%**	**266**	**35.2%**	**756**	**100.0%**

Figure 18 provides a visual representation of how the Rule 16.1 designation varies according to the type of resolution. Because the designation is made early in the case and the resolution is generally the concluding substantive event, this data may relate to the types of cases using Rule 16.1.

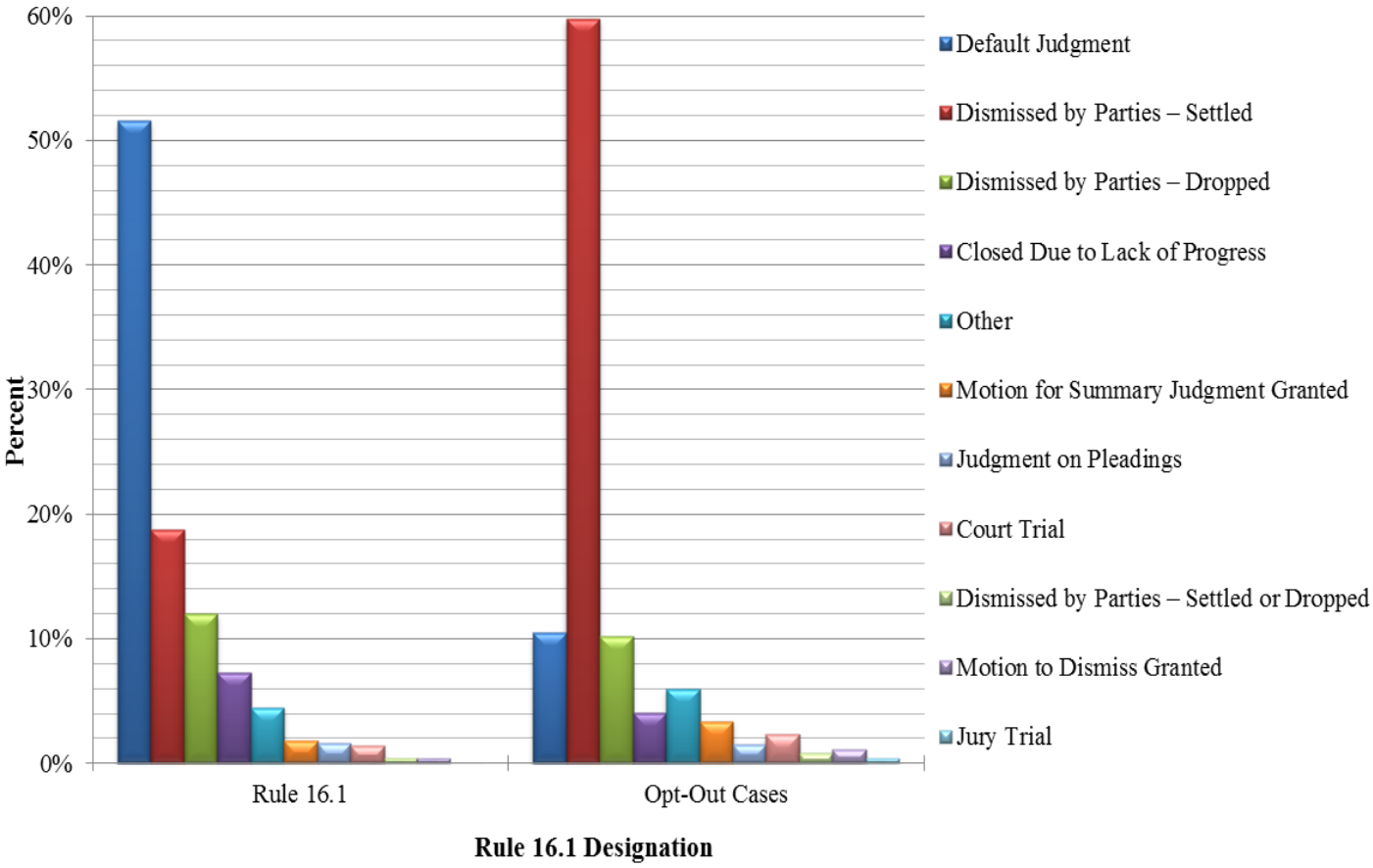
[43] The "Other" resolution type includes cases which were stayed due to a bankruptcy filing, cases in which the matter was resolved at a hearing or court appearance (not trial), cases which were dismissed for a party's failure to comply with a court order, cases in which arbitration was compelled, cases in which a stipulation for confession of judgment was filed, and cases which had not reached resolution by the time of data collection.
[44] This category is used if the researcher was unable to determine whether the case was settled or dropped.

Figure 18: Rule 16.1 Designation for Resolution Type



Shown differently, Figure 19 provides the percentage that each resolution method constituted for all Rule 16.1 cases and all opt-out cases. While default judgment and settlement made up the largest two resolution methods for both designations, Rule 16.1 cases had a vastly higher rate of default judgment, and opt-out cases had a vastly higher rate of settlement.

Figure 19: Method of Resolution Compared with Rule 16.1 Designation



Considering only Rule 16.1 default judgments (the far left bar on the graph above), 51% of those cases (130 of 254) were consumer credit collection only, 37% (94 of 254) were all other contract actions, and 6% (16 of 254) were real property title actions.

II. Time to Resolution

Considering the Rule 16.1 and opt-out designations separately, Figure 20 shows the proportion of cases within each time to resolution category. It is important to remember that these categories were chosen for consistency with model time standards, and they are not evenly spaced (e.g., the category for 1-30 days is one month long, while the category for 181-365 days is six months long). Notably, less than 9% (8.8%) of all cases lasted less than one month, and approximately the same portion of cases (8.4%) lasted more than one year. For Rule 16.1 cases, a plurality (43.1%) resolved within 31-90 days. For opt-out cases, a plurality (49.8%) resolved within 181-365 days.

Figure 20: Time to Resolution by Rule 16.1 Designation

Resolution Time (in Days)	Rule 16.1		Opt-Out Cases		TOTAL	
	n	Percent	n	Percent	n	Percent
1-30 days (within one month)	53	10.8%	13	4.9%	66	8.8%
31-90 days (between one and three months)	211	43.1%	33	12.5%	244	32.4%
91-180 days (between three and six months)	122	24.9%	41	15.6%	163	21.6%
181-365 days (between six months and one year)	86	17.6%	161	49.8%	217	28.8%
365+ (more than one year)	18	3.7%	45	17.1%	63	8.4%
TOTAL	**490**	**100.0%**	**263**	**100.0%**	**753**[45]	**100.0%**

For each resolution time category, Figure 21 shows the portion of Rule 16.1 cases and the portion of opt-out cases. About 80% of cases that resolved within one month were Rule 16.1 cases, while 20% were opt-out cases. It is the opposite pattern for cases that lasted more than one year.

Figure 21: Use of Rule 16.1 by Time to Resolution

Resolution Time	Rule 16.1		Opt-Out Cases		TOTAL	
	n	Percent	n	Percent	n	Percent
1-30 days (within one month)	53	80.3%	13	19.7%	66	100.0%
31-90 days (between one and three months)	211	86.5%	33	13.5%	244	100.0%
91-180 days (between three and six months)	122	74.8%	41	25.2%	163	100.0%
181-365 days (between six months and one year)	86	39.6%	161	60.4%	217	100.0%
365+ (more than one year)	18	28.6%	45	71.4%	63	100.0%
TOTAL	**490**	**65.1%**	**263**	**34.9%**	**753**	**100.0%**

[45] Three cases are excluded from resolution time calculations due to the fact that no resolution has yet been reached in those cases.

Figure 22 provides a visual depiction of time to resolution within the discrete time categories. The Rule 16.1 and opt-out designations create an interesting mirror image.

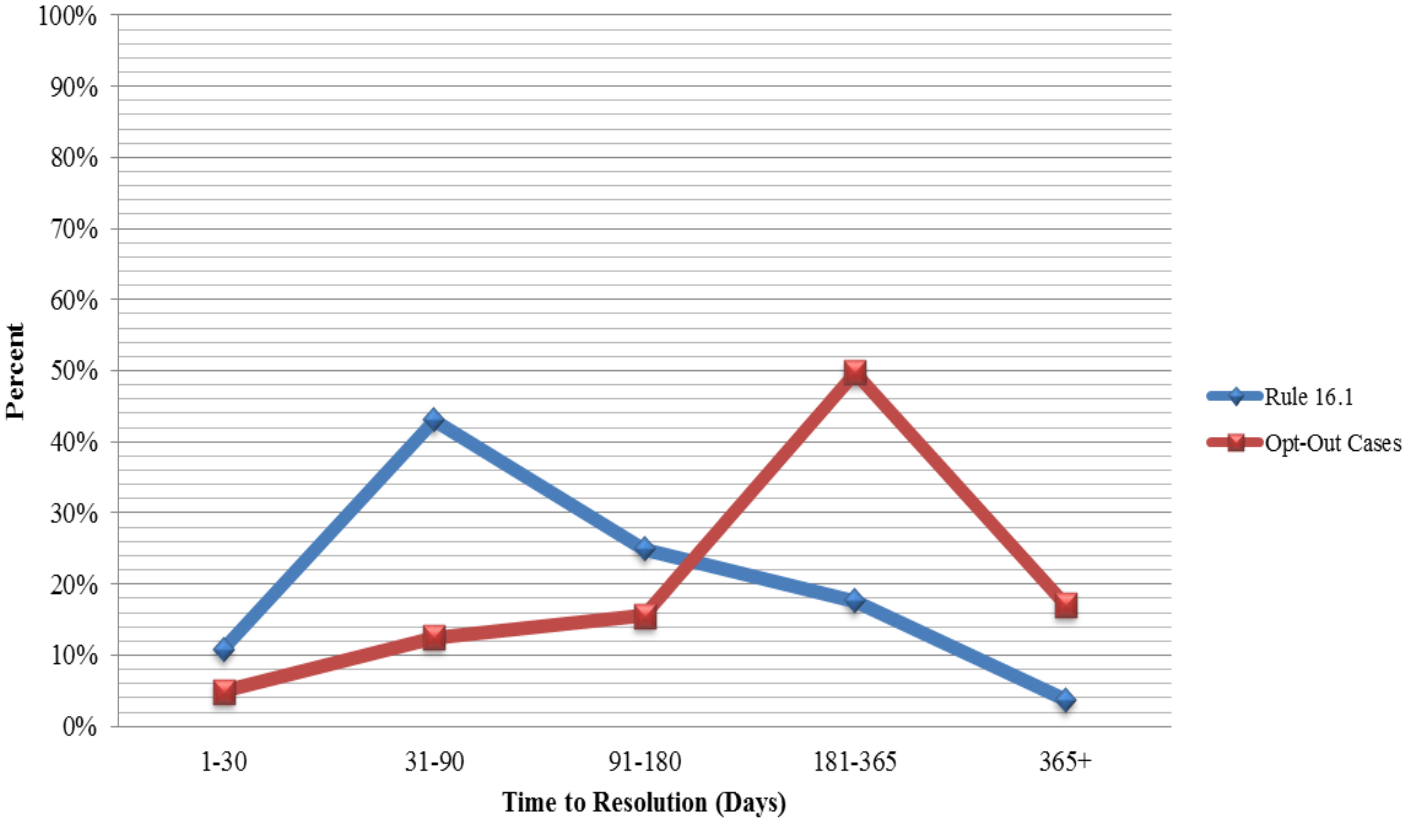


Figure 22: Time to Resolution Compared with Rule 16.1 Designation

Considering only Rule 16.1 cases, a majority (264 of 490, or 53.8%) resolved within 90 days. Of those that resolved early, 53% (140 of 264) were consumer credit collection cases. In addition, 65% of those that resolved early (170 of 264) ended in default judgment.

C. Motions and Court Appearances

We also examined Rule 16.1 and opt-out cases with respect to their relative number of motions and court appearances (i.e., the amount of activity in the case). Again, it is important to remember that these measures are merely descriptive and do not speak to the question of whether Rule 16.1 caused any differences between the two sets of cases.

Figure 23 shows that, in our sample, Rule 16.1 cases had fewer motions filed than opt-out cases. This may be due to the type and complexity of the cases within each designation.

Figure 23: Motions Count by Rule 16.1 Designation

Motions Count			
	Rule 16.1 n=490	**Opt-out n=266**	**TOTAL n=756**
Mean	1.66	3.23	2.24
Median	1	2	1
Mode	1	0	1
Standard Deviation	1.81	4.43	3.11
Minimum	0	0	0
Maximum	20	33	33

Figure 24 shows that Rule 16.1 cases also had fewer court appearances as measured by number of days in which an appearance occurred.[46] Again, this may be due to the type and complexity of the cases within each designation. It is notable that court appearances were relatively infrequent overall, with the median number resting at zero.

Figure 24: Court Appearances by Rule 16.1 Designation

Court Appearances			
	Rule 16.1 n=490	**Opt-out n=266**	**TOTAL n=756**
Mean	0.16	0.46	0.26
Median	0	0	0
Mode	0	0	0
Standard Deviation	0.60	1.03	3.11
Minimum	0	0	0
Maximum	5	7	7

[46] Because the count refers to the number of days during which an appearance occurred, a hearing spanning more than one day may be counted as multiple appearances. Nevertheless, it is still an appropriate measure of court involvement and resources expended.

B. THE IMPACT OF RULE 16.1: THE INITIAL PILOT PROJECT AND CASES CLOSED IN 2010

With respect to the goal of examining Rule 16.1's impact on civil litigation, IAALS decided to analyze two sets of data: 1) cases designated as part of an initial pilot of the simplified procedure and 2) a subset of the cases closed in 2010. Using statistical modeling of the docket data, we examined the impact across four measures: time to resolution, time to the final event, number of motions, and number of court appearances. Within the initial pilot project and within the subset of cases closed in 2010, Rule 16.1 cases were tested against opt-out cases for each measure. Examining the separate but parallel results from these two different time periods provides a better sense of the impact than could be obtained from examining one time period alone.

1. METHODOLOGY

The main challenge for this impact analysis was the identification of comparable cases that did and did not use the procedure. Specifically, because Rule 16.1 has an amount in controversy criteria for eligibility but is also completely voluntary, it can be difficult to discern whether the rule was not used in a particular action because it was an ineligible case (claim over $100,000) or because it was an eligible opt-out case (claim under $100,000). Although the cover sheet may give some indication, the initial designation can be subject to manipulation.[47] In addition, neither the pleadings nor any other filings are required to specify the damages amount sought, although this does occur in some cases.

A. SCOPE

In an effort to minimize the problem of identifying comparable cases, IAALS decided to reexamine cases in an initial pilot project, conducted before the rule was adopted on a permanent basis. According to Richard Holme, one of the drafters of the rule and an early champion of the effort, the pilot project began in March 2000 and included eligible cases assigned to Chief Judge Harlan Bockman in Adams County and Judge Christopher Munch in Jefferson County.[48]

Examination of the State Court Administrator's Office coding schedule revealed that codes were established for cases in the pilot project. There is a code for those cases that proceeded under the simplified procedure as part of the project, as well as a code for those cases in which the parties opted to use the standard procedure instead.[49] Presumably, a party could only opt out if the case was eligible to participate in the first instance, and therefore the codes provide a comparable set of Rule 16.1[50] and opt-out cases for analysis.

A query of district court civil cases for the years 2000 (when the pilot project began) through 2004 (when the rule became permanent) generated a list of cases containing a pilot project code ("Initial Pilot Project").[51] Because the initial code assigned to the case might not reflect subsequent events (e.g., the parties may have opted out at a later date), IAALS researchers examined the events in each case to ensure that the classification was correct. In addition, those cases that were consolidated with another case or moved to another court were removed from the data.

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[47] Please refer to the in-depth interview discussion below.
[48] Holme, *supra* note 1, at 12-14.
[49] A third code was also established, as it was anticipated that a control group of cases from a separate courtroom in both counties would be selected. *Id.* However, no cases contain the control code.
[50] The rule was designated as "Rule 1.1" during the initial pilot project phase.
[51] Although the query identified a handful of cases in three additional counties, the review was limited to the "official" pilot project courts.

After the review was complete, the Initial Pilot Project dataset contained 536 cases from Adams County and 155 cases from Jefferson County. Of 691 total cases, 311 used Rule 16.1 and 380 opted out. These cases fell across 24 standard court case type categories. The following table provides a list of included case types, as well as the portion of each type within the studied cases.

Figure 25: Initial Pilot Project Impact Analysis Standard Case Types

Case Type	Number	Percentage of Studied Cases
Breach of contract	155	22.4%
Breach of warranty	7	1.0%
Declaratory judgment	8	1.2%
Foreclosure other than Rule 120	11	1.6%
Forcible entry and detainer	3	0.4%
Goods sold and delivered	18	2.6%
Injunctive relief	2	0.3%
Lien	1	0.1%
Landlord-tenant	2	0.3%
Malpractice	9	1.3%
Mechanics lien	11	1.6%
Money	59	8.5%
Negligence	67	9.7%
Note	26	3.8%
Other	37	5.6%
Property damage	6	0.9%
Personal injury	19	2.8%
Personal injury – motor vehicle	231	33.4%
Quiet title – Rule 105	6	0.9%
Replevin	1	0.1%
Specific performance	4	0.6%
Services rendered	1	0.1%
Wrongful death	4	0.6%
Wrongful death – motor vehicle	3	0.4%
Total	**691**	**100%**[52]

Although the Initial Pilot Project can provide more assurance of comparability between Rule 16.1 and non-Rule 16.1 cases, there are a number of challenges with this dataset with respect to examining the impact of Rule 16.1. First, Rule 16.1 was amended somewhat after the initial pilot project. For ease of reference, the earlier version is contained in Appendix B. Second, the specifics of pilot project coding and implementation, as applied each of these cases, are unknown. Finally, the same caveat with respect to the inconsistency of standard case types applies to the Initial Pilot Project. However, IAALS researchers were unable to reclassify those cases, as we did with the more current dataset, because fewer than half of the complaints were available in electronic format for viewing.

Therefore, IAALS expanded the study of the impact of Rule 16.1 to include examination of *both* the Initial Pilot Project *and* cases closed in 2010 ("Cases Closed 2010"). Conducting parallel but separate analyses comparing Rule

[52] The percentages contained in the table do not total 100% exactly due to rounding.

16.1 cases with opt-out cases within each group helps to serve as a check on the inherent deficiencies present with respect to either group.

Within Cases Closed 2010, cases unresolved or without an indication of the applied process were removed from the analysis, leaving 754 cases. Of those, 460 were resolved—dropped, settled, closed by the court, or default judgment entered—without any appearance by the defendant(s) in the case. Such cases would provide little additional insight on impact, as the defendant(s) must engage in a case before any differences between Rule 16.1 and the standard pretrial process emerge. Accordingly, those cases were also removed. The impact analysis was conducted on the remaining 37.5% of cases, or 294 cases in total. Those cases fell into the following IAALS case type categories.

Figure 26: 2010 Impact Analysis IAALS Case Types

Case Type	Number	Percentage of Studied Cases
Consumer Credit Collection Only	41	13.9%
All Other Contract Actions	86	29.3%
Motor Vehicle Accident Only	77	26.2%
All Other Tort Actions	44	15.0%
Title to Real Property	7	2.4%
All Other Property Actions	8	2.7%
Professional Relationship	14	4.8%
Enforcement	5	1.7%
Clerical	4	1.4%
Unable to Determine	8	2.7%
Total	**294**	**100%**

It should be emphasized that examining both the Initial Pilot Project and the more limited Cases Closed 2010 separately does not eliminate two major challenges for an impact evaluation. First, as the rule was voluntary during the pilot project period and is voluntary today, there is a self-selection bias within both groups. In other words, notwithstanding the amount in controversy, cases in which the parties decided to opt out of the rule could be intrinsically different from those that proceeded under Rule 16.1. While we tracked and controlled for some extraneous variables, reliable data were not available with respect to all factors that might affect the results. This includes many important factors, such as case complexity. Second, we cannot know the extent to which the parties and court actually adhered to Rule 16.1 in cases to which it was officially applied, particularly because much of the pretrial process occurs outside the purview of the case record. If the parties and the court tend to litigate Rule 16.1 cases similarly to non-Rule 16.1 cases, this convergence will not be apparent in the analysis. It is important to view the impact analysis with these challenges in mind.

B. MEASURES

Based upon the available data, we evaluated the impact across four measures:

- **Time to resolution.** This is defined as the time from the event that originated the case (e.g., complaint) to the event that provided a decision on the status of every substantive claim at the trial level (e.g., dismissal or judgment).

- **Time to the final event.** This is defined as the time from the originating event to the last recorded event in the case. This would include events such as requests to modify the resolution, appeal-related activity,

collections activity, and notification of satisfaction of judgment. It reflects how long the parties are involved with the case even after resolution.

- **Number of motions.** This is a gauge of the number of times the parties needed to involve the court to resolve an issue. It can be used as an indicator of cost.

- **Number of court appearances.** This is the number of times that any party appeared before the court, either in person or by telephone. It relates to the level of judicial management, but can also be used as an indicator of cost.

Although it would have been ideal to examine the impact on trial rate and trial time, the number of occurrences within each dataset was too small to accurately model those measures.

C. Modeling Approach

To test the impact of Rule 16.1 on the duration measures (time to resolution and time to final event), the Cox Proportional Hazard model was employed. This model allows for the establishment of a baseline expectation of how likely a case is to resolve or conclude at any given point in time. The impact of Rule 16.1 on the baseline expectation is then tested to determine whether it significantly increases or decreases the likelihood that the event will occur sooner or later. This process is also known as a risk analysis, and describes the relative risk of an event ("risk" is used here in a pure probability sense without the normally pejorative implications). A finding that Rule 16.1 significantly increases the risk of a case resolving earlier is also a finding that Rule 16.1 significantly decreases the time from filing to resolution.

The number of motions and court appearances are event counts, which have a non-normal distribution. Therefore, to avoid making false inferences, a negative binomial regression model was employed. This model uses an alternative distribution more appropriate for court data, and can reveal the impact of Rule 16.1 on the expected count of motions and court appearances.

A more complete explanation of the modeling approach is contained in Appendix C.

D. Control Variables

It was important to control for other factors that might theoretically impact the time to resolution, time to final event, number of motions, and number of court appearances. However, we could only control for factors on which we had reliable available data.[53] These factors were slightly different for the Initial Pilot Project and the Cases Closed 2010.

The following were the control variables for the Initial Pilot Project:

- **Court (county).** Because cases from district courts in two counties (Adams and Jefferson) are included in the dataset, this is a dichotomous variable.

[53] We collected data on certain additional variables, but excluded them from the analysis due to either sufficient evidence of inconsistency in the systems to render the data unreliable (presiding judge, number of claims, and use of an alternative dispute resolution process) or insufficient occurrences in the dataset to incorporate them effectively into the model (indigence of any party in the Initial Pilot Project).

- **Year filed.** Cases in the dataset were initiated in 2002,[54] 2003, and 2004. With three values, each was coded as a dichotomous dummy variable. To avoid co-linearity, one variable needed to be left out of the model, or rather, used as the reference point. Here, 2003 was used as the reference point.

- **Number of plaintiffs.** The values for this variable ranged from one to nine.

- **Number of defendants.** The values for this variable ranged from one to 37.

- **Method of resolution.** From the 12 methods of resolution tracked, three dichotomous dummy variables were created to ensure sufficient occurrences within each to draw reliable conclusions: default judgment; case dismissed by parties (i.e., dropped or settled); and all other types of resolution (i.e., court involvement).[55] "Other types" was omitted to serve as the reference category.

An important factor to consider in modeling time to resolution, number of motions, and number of court appearances is the case type. However, for the Initial Pilot Project, the only information available was the standard case type code. Because there are a large number of these codes and because their use proved to be inconsistent, a clustering procedure was used. This procedure helps to account for any correlation in errors associated with case type by recognizing unique patterns and estimating standard errors, improving the ability to make accurate inferences. The analysis of the Initial Pilot Project focuses on the models clustered on case type.

The following were the control variables for Cases Closed 2010:

- **Number of plaintiffs.** The values for this variable ranged from one to nine.

- **Number of defendants.** The values for this variable ranged from one to seven.

- **Indigence.** A dichotomous variable was used to reflect if any party in the case had an indicator of indigence.

- **Insurance company as party.** A dichotomous variable was used to reflect if any plaintiff in the case was an insurance company; a separate variable was used to reflect if any defendant in the case was an insurance company.

- **Court (county).** Dummy variables were created for each of the 14 included counties. Arapahoe County was omitted as the reference category.

- **Case type.** For this dataset, the cases were coded by IAALS researchers, and thus are reliable. Case type dummy variables were created for each of the following categories: consumer credit debt collection; other contract; motor vehicle accident; other tort; title to real property; other property; professional relationship (business/employment); enforcement; clerical; and undeterminable. "Other contract" was omitted as the reference category.

- **Method of resolution.** From the 14 methods of resolution tracked, three dichotomous dummy variables were created to ensure sufficient occurrences within each to draw reliable conclusions: default judgment;

[54] Because fewer than five cases were initiated in 2001, those were included in the 2002 group.
[55] The cases that were consolidated with another case (1) and moved to another court (5) were removed.

case dismissed by parties (i.e., dropped or settled); and all other types of resolution (i.e., court involvement).[56] "Other types" was omitted as the reference category.

2. Impact Analysis

For interpretation of the impact analysis, we again emphasize the limitations of the data, specifically: 1) the self-selected nature of Rule 16.1 cases; 2) the inability to control for all variables that might affect the four measures, including case complexity; and 3) the incapacity to discern the level of adherence to the applicable set of rules. Nevertheless, considering these limitations, it is still valuable to examine the impact of Rule 16.1 to the extent possible and within the context of the other data collected in this study.

A. Time to Resolution and Time to Final Event

The time to resolution is the most important measure with respect to Rule 16.1 and case duration, as this is the pretrial period during which the provisions of the rule take effect. However, we also examine the time to the final event in order to get a full picture of the life of a case. The following table shows the summary time statistics for all cases in the two datasets.

Figure 27: Summary Statistics for Case Duration

Initial Pilot Project: All Cases (Rule 16.1 and Opt-Out)				
Variable	**Minimum**	**Maximum**	**Mean**	**Standard Deviation**
Time to Resolution	0.143 weeks (1 day)	364.857 weeks (2554 days)	45.049 weeks (315.343 days)	42.655
Time to Final Event	3.000 weeks (21 days)	467.286 weeks (3271 days)	72.191 weeks (505.337 days)	73.651
Cases Closed 2010: All Cases (Rule 16.1 and Opt-Out)				
Variable	**Minimum**	**Maximum**	**Mean**	**Standard Deviation**
Time to Resolution	0.286 weeks (2 days)	98.571 (690 days)	33.778 weeks (236.446 days)	19.518
Time to Final Event	0.429 weeks (3 days)	170.571 weeks (1194 days)	47.304 weeks (331.128 days)	27.691

Within the Initial Pilot Project, the Cox Proportional Hazard Model reveals that Rule 16.1 cases were more than twice as likely (109%) to have a shorter time to resolution than those that opted out of the rule. Rule 16.1 cases were also 70% more likely to have a shorter time to the final event. These results were statistically significant ($p<0.01$), and held true when controlling for the number of parties, type of resolution, county, and year, while also adjusting the estimates based on the type of case. See Charts D1 and D2 in Appendix D.

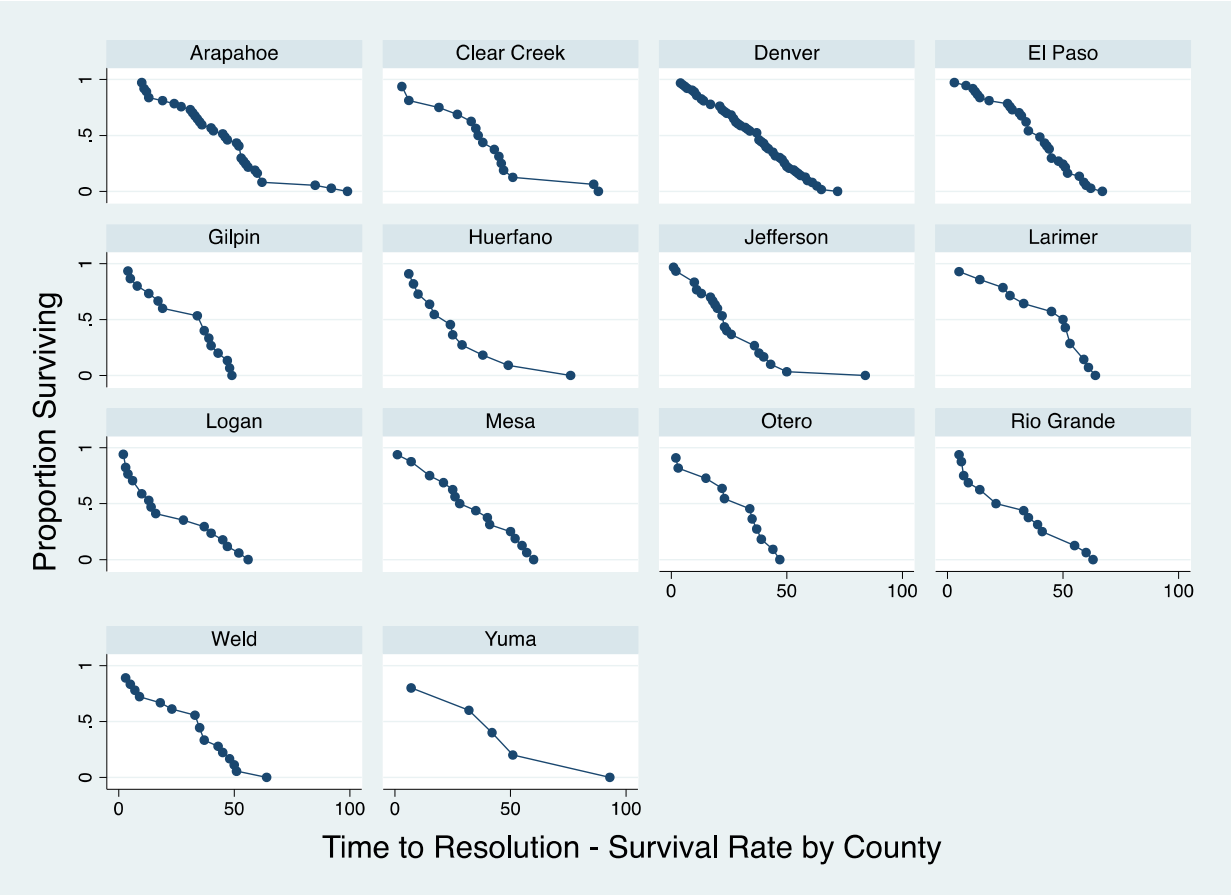
Within Cases Closed 2010, Rule 16.1 was *not* found to be associated with a statistically significant difference in time to resolution. This result held true when controlling for number and type of party, type of resolution, type of case, and indigence, while also adjusting the estimates based on the county. However, when controlling for the case type but not for the county, the application of Rule 16.1 significantly increases the likelihood of an earlier case resolution by 34%. This reveals that differences in time to resolution among counties explain the bulk of the variation in resolution time observed in general. Differences across case types also explain some of the variation.

[56] Cases that consolidated with another case or moved to another court were not included in the dataset.

As the model cannot parse out the relative variance attributable to each factor, the county and case type differences may mask the impact, if any, of Rule 16.1. Accordingly, this dataset does not support a finding that Rule 16.1 significantly impacts time to resolution. See Charts D3 and D4 in Appendix D.

Figure 28 is a visual representation of the variation in time to resolution among studied counties for Cases Closed 2010. The "survival rate" refers to the percentage of unresolved cases over time; the steeper the slope, the faster cases are resolved. It should be noted that Yuma County has only five cases in the dataset, and constitutes an outlier. During the in-depth interviews, one judge raised Yuma County as an example of a rural court that does not have a full-time judge. Rather, all cases must wait for the judge to arrive and then other cases may take priority over Rule 16.1 cases.

Figure 28: Time to Resolution by County in Cases Closed 2010



In contrast to time to resolution, with respect to time to the final event, Rule 16.1 is the most salient factor predicting shorter times in Cases Closed 2010. Rule 16.1 cases are 43% more likely to take less time between filing and the final event than non-Rule 16.1 cases. This result was statistically significant ($p<0.01$) and held true when controlling for number and type of party, type of resolution, type of case, and indigence, while also adjusting the estimates based on the county. See Charts D5 and D6 in Appendix D.

This analysis provides some indication that Rule 16.1 may have a beneficial impact on case duration. However, the evidence is mixed, as it does not provide a clear answer across all variables in both sets of data. For the more recent data, it appears that other factors exert more influence than the use of Rule 16.1.

B. Number of Motions

The number of motions filed in a case represents the number of times the parties requested court resolution of an issue. While this can indicate the level of contentiousness between the parties or the complexity of the issues in the case, for the purpose of analyzing the impact of Rule 16.1, we use it as an indicator of cost. Every motion requires an investment in the case. The following table shows the summary motions statistics for all cases in the two sets of data.

Figure 29: Summary Statistics for Number of Motions

Initial Pilot Project: All Cases (Rule 16.1 and Opt-Out)				
Variable	**Minimum**	**Maximum**	**Mean**	**Standard Deviation**
Number of Motions	0	135	3.321	7.047
Cases Closed 2010: All Cases (Rule 16.1 and Opt-Out)				
Variable	**Minimum**	**Maximum**	**Mean**	**Standard Deviation**
Number of Motions	0	24	2.884	3.555

Within the Initial Pilot Project, estimates of a negative binomial regression with clustered standard errors reveals that Rule 16.1 cases had 66% fewer motions than cases that opted out of the rule. This result was statistically significant ($p<0.01$) and held true when controlling for the number of parties, type of resolution, county, and year, while also adjusting the estimates based on the type of case. See Chart E1 in Appendix E.

Within Cases Closed 2010, the same model reveals that Rule 16.1 cases had 37% fewer motions than non-Rule 16.1 cases. This result was statistically significant ($p<0.01$) and held true when controlling for number and type of party, type of resolution, type of case, and indigence, while also adjusting the estimates based on the county.

This analysis provides strong preliminary evidence that Rule 16.1 has a beneficial impact on the number of motions. To the extent that motions serve as a proxy for cost, it also indicates decreased litigation expenses in Rule 16.1 cases. See Chart E2 in Appendix E.

C. Number of Court Appearances

The number of court appearances represents the number of times the parties discussed the case with the court, at any level of depth. While this was originally included in the study as an indication of the level of judicial management, it can also be used as an indicator of cost because, as with motions, every appearance requires an investment in the case. Accordingly, there may be differing opinions with respect to the benefits and drawbacks of any increase or decrease in this number. The following table shows the summary court appearance statistics for all cases in the two sets of data.

Figure 30: Summary Statistics for Number of Court Appearances

Initial Pilot Project: All Cases (Rule 16.1 and Opt-Out)				
Variable	**Minimum**	**Maximum**	**Mean**	**Standard Deviation**
Number of Appearances	0	8	0.320	0.723
Cases Closed 2010: All Cases (Rule 16.1 and Opt-Out)				
Variable	**Minimum**	**Maximum**	**Mean**	**Standard Deviation**
Number of Appearances	0	7	0.520	1.073

Within the Initial Pilot Project, estimates of a negative binomial regression with clustered standard errors reveals that Rule 16.1 cases had 55% fewer court appearances than cases that opted out of the rule. This result was statistically significant ($p<0.01$) and held true when controlling for the number of parties, type of resolution, county, and year, while also adjusting the estimates based on the type of case. It should be noted that, as a general matter, cases in Adams County had 52% more court appearances than cases in Jefferson County. See Chart F1 in Appendix F.

Within Cases Closed 2010, Rule 16.1 was not found to be associated with a statistically significant difference in the number of court appearances. This result held true when controlling for number and type of party, type of resolution, type of case, and indigence, while also adjusting the estimates based on the county. See Chart F2 in Appendix F.

Given the differences between the two sets of data, there is mixed evidence as to Rule 16.1's measureable impact on court appearances. Again, it is not clear whether a reduction in court appearances would be considered an indication of a beneficial decrease in litigation costs and/or a detrimental decrease in judicial management.

VI. IN-DEPTH INTERVIEWS

While the docket study provides important quantitative information on the role and impact of Rule 16.1, it cannot provide a complete picture. As many of the decision points occur outside the court record and involve strategy considerations, the experiences of attorneys and judges provide essential insight, necessary for a thorough understanding of Rule 16.1. Therefore, IAALS researchers collected such qualitative data by conducting in-depth interviews.

A. METHODOLOGY

At the end of the initial Rule 16.1 survey conducted in 2010, IAALS asked respondents whether they would be willing to participate in further studies on the simplified procedure. That question yielded a list of volunteers, consisting of 120 attorneys and 28 judges statewide. Each of these volunteers were contacted via their preferred method (email or telephone) and invited to be interviewed by IAALS researchers for the purpose of this study. In total, 31 individuals agreed to participate. Ultimately, IAALS conducted 29 interviews with 22 attorneys and seven judges.

The interviews took place during the month of July 2012. Due to constraints on researcher travel, only interviews of those in the Denver-metro area could be conducted in person; interviews of participants located elsewhere in the state were conducted via telephone. Because not all of the interviews would be face-to-face, participants in the

Denver area were allowed to choose the interview method at the time of scheduling. Seven participants chose an in-person interview, and the remaining 22 interviews were conducted by telephone. Generally, the interviews lasted 30 minutes.

To facilitate open communication and protect the identities of participants, the interviews were not recorded. Rather, an IAALS researcher took comprehensive notes during each interview to capture the conversation. A basic list of questions provided the starting point. Examples of the attorney questions include:

- What role does Rule 16.1 play in your practice?
- What is the conversation you have (if any) with clients about Rule 16.1?
- How do you decide whether Rule 16.1 will be used?
- What are the benefits and drawbacks of the process?
- How do Rule 16.1 disclosures operate in practice?
- Do judges handle Rule 16.1 cases differently than other cases?
- Have the stated goals of Rule 16.1 been met?
- What would you like the Colorado Supreme Court to know about Rule 16.1?

Examples of the judge questions include:

- What role does Rule 16.1 play in your courtroom?
- What has been the reaction to Rule 16.1?
- What is the level of cooperation you see in Rule 16.1 cases as compared to other cases?
- What are the benefits and drawbacks of the process?
- How do Rule 16.1 disclosures operate in practice?
- Do you manage Rule 16.1 cases differently than other cases?
- Have the stated goals of Rule 16.1 been met?
- What would you like the Colorado Supreme Court to know about Rule 16.1?

However, IAALS researchers had the flexibility to adapt the interview to the specifics of the participant's practice, ask follow-up questions based on previous answers provided, and delve into unanticipated areas of discussion. As a result, each interview was different, and insights gained during the earlier interviews changed the dimensions of subsequent interviews. The point was to gain a deeper understanding of Rule 16.1 rather than adhere to a prescribed set of questions.

B. FINDINGS

The interview process was an important effort, as it captured aspects of Rule 16.1 that could not be gleaned from the numbers alone. However, because we spoke with a limited group of self-selected individuals, the data are not readily generalizable to a broader population. In addition, reporting the responses in numerical terms would be problematic, given the number of interviews and the complexity of the issues discussed. In the following narrative, we have tried simply to identify themes while preserving minority viewpoints.

The participants were ultimately quite diverse, in both experience and perspective. While most of the attorneys have offices in the Denver-metro area, we spoke to a number in Northern Colorado and to one in Aspen. Length of practice ranged from four to 53 years, and firm size ranged from solo practice to 70 attorneys. Areas of practice ranged from commercial business litigation, to personal injury and medical malpractice, to employment law, to eminent domain.

Each of the seven judges hailed from a different judicial district, and the group included judges from the western half of the state. One of the judges has a dedicated civil docket, while the others handle some mix of civil, criminal, and domestic cases. Time on the bench ranged from four to 25 years; three of the judges were appointed after Rule 16.1 was enacted in 2004. When asked to describe their overall approach to civil cases, answers ranged from "active and early management" to "somewhere in the middle…involved, but not as involved as some other judges" to "letting the attorneys do their own thing as long as they are managing [the case] appropriately."

1. The General Role of Rule 16.1

Some of the attorney interviewees use Rule 16.1 regularly and find it to be of benefit to clients, citing streamlined litigation, faster results, and monetary savings. One firm has a policy to use Rule 16.1 in "appropriate" cases, based on an overall philosophy not to overcharge the client.

Nevertheless, there is a common perception that opting out of the procedure is the norm. The rule was described as "a noble thought," but an effort with ultimately little impact. The procedure is viewed as "just another set of rules" that practitioners do not normally think about. One attorney stated: "I think it was an abortive idea because if no one uses it, it's just a useless tool. It's not even an infrequently used tool, it's totally useless."

Likewise, the judges reported that Rule 16.1 plays a de minimus role in their courtrooms, describing the procedure as "below the radar" or "largely ignored." The perception is that the vast majority of cases circumvent the rule by opting out, and thus it has not become the default rule as intended. One judge estimated a 5% rate of use, while another stated that only about five cases in the last four years have proceeded under the rule. A third described Rule 16.1 cases as "rare." In fact, one judge admitted: "Until you called me, I had not given much thought to 16.1 . . . maybe it's because [those cases] never go to trial."

These responses make sense, even in light of the docket data showing that a majority of cases in eligible categories actually elect to use the rule. First, with respect to attorneys, use of the rule is high in certain practice areas, so it may appear low to those who practice in areas where use of Rule 16.1 is less common. In addition, rates of use are lower in cases involving an attorney on both sides, so those typically involved in contested actions will see Rule 16.1 cases less often. Second, with respect to judges, many Rule 16.1 cases resolve by default judgment. The judges interviewed reported becoming personally aware of the applicable pretrial procedure only when there is a need to rule on a motion or prepare for an upcoming conference.

2. Characteristics of Rule 16.1 Cases

Generally, the attorneys interviewed reported electing to use the rule in very straightforward ("cut and dried") cases that require little discovery in any event and involve less than $50,000 in damages. For those cases, Rule 16.1 makes the process "very circumscribed and tight."

The judges interviewed reported that Rule 16.1 is used most often in money collection cases, and this is supported by the docket data. The judges noted that in these kinds of cases, usually one side has an attorney and finds it advantageous to limit the process, while the other side does not know how the rule works or what it means. In fact, some of the judges pointed to a pattern of use in cases with pro se parties.

At the other end of the spectrum, judges noted a pattern of use in cases with "reasonable" or "experienced" attorneys with a strong working relationship, as they understand the necessary level of process and are willing to "stipulate to a minimal amount of discovery to the extent that the rule is too constraining."

One attorney with a general civil practice does not recall opting out in an eligible case: "People in a case of that size are not interested in spending a bunch of money if they don't have to." One attorney stated that the decision is about "the economics of the case, client resources, and the prejudice that may result from the lack of discovery."

3. Reasons for Opting Out

Given the general impression that electing exclusion is the most common course of action with respect to Rule 16.1, it is important to explore rationales for doing so. While a few attorneys stated that they only exclude a case when the damages are beyond $100,000, the other reasons provided were varied.

A. Cap on Damages

There is a real sense among attorneys we interviewed that the cap on damages diminishes the use of Rule 16.1. Some have a moral objection to invading the province of the jury by limiting recovery for their own client. One attorney commented: "I don't think I'm either qualified or justified in depriving my client of all the damages seen by a jury." Another stated that it would be malpractice to "hamstring your client in this way." A third commented that the rule limits the client's leverage for settlement purposes, as well. It was also pointed out that the cap on damages "might give unsophisticated lawyers an unclear view of the purpose of the rule."

Beyond philosophical reasons, it can sometimes be difficult to establish the level of damages at the outset of a case—an ultimate issue of fact. This can be true of disputes that are not otherwise particularly complicated and could benefit from a streamlined procedure. An interviewee provided the following example: a claim for breach of a contract that entitled the plaintiff to a royalty per product sold by the defendant; the case was straightforward, but sales levels were unknown. According to one attorney with a focus on business relationship disputes: "No earlier than expert reports on damages do you have an adequate understanding of the value of the case."

Even in those cases with readily ascertainable damages, the inclusion of attorney fees in the cap can add an additional layer of uncertainty. Where fees are recoverable by contract or statute, the amounts are difficult to predict because they can vary significantly depending upon how the case progresses. The case may be resolved by default judgment, it may settle halfway through, or it could go all the way to an appellate court and back. Much depends upon the opposing party and counsel, who could be cooperative or who might be "bulldoggish," and the judge, who could be attentive or who might let gamesmanship to go unchecked.

For many of those interviewed, the limit becomes "too close for comfort" in cases over $50,000. One attorney noted that "unless you think you can do a case really cheaply, the rule really clamps down on damages." Another wondered how a lawyer could face a client who recovered less than they otherwise would have due to the procedure elected: "How do you explain that you were trying to be a good citizen, *but*…" A third declared: "It is the cap on recovery that keeps me and the people at my firm out."

B. Lack of Discovery

One judge commented that in a practice like debt collection, Rule 16.1 is "probably a good deal." But in other types of cases, even if smaller and eligible for the procedure, lawyers opt out because they almost always want to depose the opposing party. The lack of discovery is both the rule's biggest benefit (it is streamlined) and its biggest drawback (it is confining).

Some attorney interviewees believe that their clients are best served when they have the freedom to make individualized decisions within the context of the particular case. One commented: "I don't think Rule 16.1 is a bad

rule, but we want to be careful about how we restrict parties' abilities to maneuver within the system." They described Rule 16.1 as too "rigid," with the limitations on discovery as much a risk as a benefit. Many of these attorneys maintained that they incorporate the provisions of Rule 16.1 into their practice anyway, but preserving the possibility of discovery provides a measure of insurance in case the need arises. One attorney remarked: "In most cases, I don't conduct any discovery, but I need that flexibility when I need it." This attorney gave an example of a $500,000 real estate commission case requiring only one deposition. "There is a general sense that if the rules allow for ten depositions, ten will be taken, but clients don't want to pay for unnecessary activity." A defense attorney noted that he recommends the rule when representing a single client, but because the limit is defendant-specific, when the number rises to three defendants, the "risk of a $300,000 client hit is too great" to proceed without discovery.

Even those attorneys who are not categorically opposed to eliminating the possibility of discovery in an appropriate case will opt out of Rule 16.1 when they see a specific need to conduct discovery, or when they believe that the streamlined process will disadvantage their client. Reasons cited for wanting discovery, particularly depositions, include: to develop the most appropriate theory of liability; to parse a more complex case even if monetary damages are relatively low or non-existent; to test the credibility of witnesses; to ensure the complete exchange of information when the other side is not expected to be forthcoming in disclosures; and to "pin the other side down" and ensure against perjury. One attorney stated that even in non-monetary title actions, depositions are beneficial if simply for preservation purposes.

In addition, for some cases, the exchange of disclosures followed by trial is not the most efficient route to resolution. Rather, there are cases that are particularly suited for a limited amount of discovery followed by a dispositive motion. One attorney admitted that dispositive motions are routinely filed in every case in his practice, but he maintained that, even when denied, dispositive motions provide information about how the judge interprets the case, thus framing the issues for trial.

Some attorneys stated that they have stipulated to conduct limited discovery in Rule 16.1 cases, such as one day of depositions or a limited number of requests for admissions, when they discovered that the rule was too constraining for a particular case. According to these attorneys, one deposition per side, particularly depositions of parties, can be very helpful. However, if the opposing party resists allowing the discovery, it can put the party who needs it at a disadvantage. One judge stated that if attorneys ask for limited discovery under Rule 16.1, the request will most likely be granted.

C. Timing of the Decision

The decision regarding whether to use Rule 16.1 must be made early in a case. According to the judge interviewees, attorneys often opt out because they do not have enough information at the outset to feel comfortable committing themselves to a process that limits both discovery and recovery for their client. There is apprehension that the case may not turn out as expected, exposing the attorney to malpractice liability. One judge commented: "It takes a confident lawyer to be willing to proceed under Rule 16.1." Another noted: "It's the rare attorney who gives it serious consideration."

The attorney interviewees confirmed this sentiment: "Some lawyers are risk averse." It was suggested that the rule would be used more often if the determination could be delayed until after the selection of opposing counsel and the completion of disclosures. Having a better idea of what the other side's case "looks like" would lead to a better decision and fewer exclusions to protect against uncertainty.

D. Other Reasons

There are also less principled reasons for opting out. Some attorneys we interviewed get the sense that exclusion can happen "to raise the price of litigation and jerk [the other side] around a little," on both sides. There are plaintiffs' attorneys who believe that the defense bar has a financial incentive to "rack up attorney fees," particularly when litigating an insured claim. There are defense attorneys who believe that the high rate of statutory pre-judgment interest provides plaintiffs with an incentive to delay the process, as it is more than is available on any investment and quickly increases the level of damages. One attorney admitted that sometimes the client benefits from the case being more difficult to litigate, such as when the other lawyer is inexperienced or inept, or when the opposing side cannot keep their lawyer paid. Another attorney gave an example of a clear-cut wages case in which an employee was owed less than $50,000, and the employer acknowledged the state of affairs. Yet the defense strategy was to run up the bill, and ultimately, the fees, costs, and interest reached six figures. The individual who recounted this example believes that the case could have benefitted from a curtailed process.

Some attorneys we interviewed leave the decision to their client, after explaining what is given up and what is gained. Some clients want to reduce costs and get to trial more quickly. Other clients—particularly in the tort arena—are not willing to consider Rule 16.1, as they are more inclined to want to conduct lengthy discovery and less inclined to limit potential recovery.

A few attorneys stated that they have a general policy against Rule 16.1 and will inform the client that it will not be an option unless they decide to hire a different lawyer. It is also a perception that the insurance industry opts out as a matter of course.

4. Handling of Rule 16.1 Cases

A. Judicial Management

All of the judges declared that they do not handle Rule 16.1 cases differently from other civil cases as a general matter. One sends out a different standard case management order, and another allows Rule 16.1 cases to set the date of trial before completion of mandatory alternative dispute resolution, but otherwise there was no difference in management reported by the judges.

Most of the attorneys likewise reported no perceived difference in judicial treatment of Rule 16.1 cases. One attorney even observed that some judges "don't actually pay attention to what rule is applicable" and send out their own case management orders that contradict Rule 16.1, leaving the attorney in a quandary about what to do. A few noted that judges do not become involved unless a party needs help with compliance, but there was a difference of opinion with respect to whether this is a good thing or a bad thing. Only one attorney stated that judges "favor" Rule 16.1 cases.

B. Attorney Cooperation

Interviewees generally do not see a difference in the level of attorney cooperation in Rule 16.1 cases, as this is thought to depend more on the lawyers than the procedure. A few attorneys observed less cooperation in Rule 16.1 cases, giving the following reasons: counsel do not have to interact to conduct discovery; defense counsel, particularly insurance defense, has a worse-case scenario number—the reservation value of the other side—which provides less incentive to act cooperatively; and some who find themselves in the rule do not really understand it.

C. Disclosures

There is a level of dissatisfaction with disclosures among attorney interviewees in general, whether under Rule 16.1 or the standard pretrial process. Overall, disclosures are thought to be used as a trial tactic, with parties reluctant to disclose harmful information.

A number of interviewees stated that, when taken seriously and done properly, Rule 16.1 disclosures provide adequate information to try the case. However, the rule requires the parties to rely on the candor and goodwill of the other side: "The rule works when both parties lay out what they've got. No surprises or sneak attacks . . . If it's played fair, it's much more effective." As a result, interviewees believe that Rule 16.1 provides an advantage to the party that is least inclined to be honest in disclosures. If there is any effort to be vague or disguise the information, then the process becomes really difficult and consumes a lot of time. One attorney commented that "it can be like pulling teeth." In this regard, the defendant has a slight advantage because the plaintiff has the burden of proof.

With respect to their own witness disclosures, the attorneys expressed apprehension about ensuring adequate disclosures. The level of detail required by the procedure is not clear and receives inconsistent application by judges. As one attorney explained: "Some judges require the testimony to be identical to the disclosures—verbatim; others allow for disclosure of just the subject matter—more vague." One attorney noted that the lack of appellate law on the issue means there is essentially no guidance for practitioners. Accordingly, there is a fear that choosing Rule 16.1 entails a lot of detailed work, as well as a greater risk of sanctions in the event that the attorney's own interpretation does not match the judge's expectations. In addition, because more detailed disclosures require a significant investment, cases with more than a few witnesses are less likely to elect to use the rule. The docket data confirm this sentiment.

However, there is frustration with the lack of enforcement of the disclosure requirement with respect to the opposing party. Generally, in response to a request to compel or for sanctions, the court will simply order the other party to comply. While acknowledging the need to resolve cases on their merits, the attorneys we interviewed also believe that judges underestimate the harm caused by unchecked gamesmanship and the presentation of evidence not disclosed, particularly when discovery is not available to ensure an appropriate exchange of information prior to trial. In one attorney's experience, failure to disclose a witness completely will result in preclusion of the witness, but failure to adequately disclose a witness' testimony will never result in preclusion. The aggrieved party is generally left with a choice between proceeding to trial blind or tolerating a continuance. Such lenience has an effect on the overall culture of disclosures.

The attorney interviewees do not perceive the judges to be receptive to hearing disclosures issues. When asked, none of the judge interviewees could specifically recall having encountered any disputes or problems related to disclosures in Rule 16.1 cases, with the caveat that they see relatively few such cases and that disclosure issues usually arise at trial. Drawing from his days in practice, one newer judge commented: "[There] needs to be a whole ethical change where people stop gamesmanship and stop hiding the ball. . . [with] default sanctions for failure to comply."

The attorneys and judges we interviewed agree that, at least in principle, Rule 16.1 disclosures should not operate any differently than criminal disclosures: "Lawyers are under a particular obligation, whether it stems from the Constitution or not." In addition, for some attorneys, the issue of surprise at trial does not constitute a reason not to use the rule, as criminal cases are tried based on disclosures.

5. Intended Effects

Interviewees were asked to evaluate whether Rule 16.1 had met its stated goals of: "limit[ing] discovery and its attendant expense"; "provid[ing] the earliest practicable trials"; and "maximiz[ing] access to the district courts in civil actions."

A. Limiting Discovery Expenses

Overall, interviewees believe that Rule 16.1 does limit discovery costs, and cases with "full blown discovery" are more expensive. One attorney described the fact that "no one can run up the discovery bill" as a "selling point" to clients. Another stated that "if used properly, it's a reasonably effective way of having a case prepared within a reasonably small budget." There were a number of caveats expressed by both attorneys and judges, however. First, to the extent that parties opt out of the rule in eligible cases, potential cost savings are not realized. Second, for certain kinds of cases, a limited amount of targeted discovery (such as an expert deposition) can lead to a very efficient resolution through settlement or a dispositive motion. Third, certain aspects of Rule 16.1 are more expensive, such as the preparation of detailed witness disclosure statements.

A minority of attorney interviewees do not believe that Rule 16.1 lowers costs. One explained that removing the lawyer's ability to make individual determinations about the needs of a case makes litigation needlessly complicated and thus more expensive. He described clients and lawyers as cost-conscious (with the exception of those clients who are litigating an insured claim). Another described "concomitant expenses" associated with Rule 16.1, such as hiring a third party investigator in lieu of taking depositions. It was also noted that Rule 16.1 cases consume more courtroom time at trial, particularly on cross-examination.

B. Providing Early Trials

Only one judge reported giving priority to Rule 16.1 cases ("there is that incentive in my court"). The other judges affirmed that trial dates are driven more by court calendars and attorney schedules than the applicable rule. One judge stated that Rule 16.1 cases are "still competing with everything else going on in the trial court. We give everyone the earliest possible date regardless of the rule." Generally, the attorneys expressed agreement with this assessment, although some mentioned that certain courts (e.g., Denver and Jefferson County) are really good about providing early trial dates regardless of the case.

A handful of attorneys stated that Rule 16.1 cases do have faster trial settings, either because of their priority status or because the cases are ready to go to trial sooner. A couple of attorneys resisted the idea that a faster trial is a laudable goal for all cases, as some need time to develop, for the benefit of both the plaintiff and the defendant.

C. Maximizing Court Access

Attorney interviewees generally do not believe that Rule 16.1 has "maximized access" or increased the number of people who can file a case in court. The main reason provided: it is an optional rule with low rates of use. While acknowledging that Rule 16.1 does balance the playing field, which is tilted in favor of moneyed interest in the standard process, one attorney pointed to the fact that the disclosure process can be expensive due to the lack of judicial enforcement of the requirements. This attorney explained that the judges simply allow continuances when faced with a disclosure issue, which "isn't more speedy or just, it's expensive and unfair."

Judge interviewees expressed concerns about the fairness of the process. One judge stated: "There is a casino attitude here that requires the parties to put larger and larger blinders on for relatively little savings. It takes away fairness and only saves a few dollars…the trend in civil is the opposite of criminal." Another urged better efforts to help pro se litigants understand the procedure and its implications.

D. Nature or Nurture?

Interviewees were asked whether any time and cost benefits were more attributable to the nature of the cases that proceed under the rule or to the effects of the rule itself. Generally, there is the impression that cases under $100,000 are less complex, and thus predisposed to shorter and easier resolutions. According to the judges, these cases "are able to be ready on a faster timeline" and "seem to always settle, probably not viable to try." One attorney noted: "By definition, smaller cases don't generate as much litigation heat." However, credit was also given to the rule. Rule 16.1 can have an effect through its structure (limiting discovery and its attendant games) or through its message (parties try to comply with the spirit of the rule). An attorney stated that "it's better than nothing," but a judge commented that the nature of the attorneys trying the case is the most important factor.

6. Evaluation of Applicability Criteria

A. Amount in Controversy

Most of the attorney interviewees believe that the $100,000 criteria for inclusion in the rule is appropriate, while the remainder are split between raising and lowering the amount. Several described any amount as "arbitrary," but consider $100,000 to be a "legitimate" or "realistic" place to draw the line. While one might question the link between monetary damages and complexity, "generally if you are under $100,000, you don't need discovery and the client doesn't have enough money." One attorney provided a formula to support the limit, figuring that attorney fees in a district court case on either side are likely to be $25,000 to $30,000, and the standard contingent fee is 30%.

The attorneys who expressed that the limit is too high stated that, for some clients, it is too great a risk to "roll the dice" without the protections that discovery provides. For example, some small businesses can be made or broken by $100,000. The attorneys who expressed that the limit is too low cited the need to account for inflation, the fact that attorney fees are not included, and the desire to have more cases use the rule to benefit from the expedited treatment. One attorney noted: "$100,000 is a lot of money, but the limit isn't likely to encourage people to jump in unless liquidated."

A portion of attorneys expressed indifference to the monetary threshold. According to some, the current level does not make a lot of difference because the decision is really made in those cases between $15,000 (county court jurisdiction) and $50,000. One attorney stated, "I would leave it alone, if for no other reason than the Supreme Court changes the rules too often."

Generally, the judges also believe the $100,000 level is a "reasonable" place to demarcate less serious from more serious cases. One judge acknowledged that the threshold limits the number of cases subject to the rule, but considers that to be appropriate "given the other components of the rule." According to another judge's assessment, discovery can be worth the investment once there is more than $100,000 in controversy. One judge deems the limit too high.

B. Voluntary Process

Attorney and judge interviewees were split between those in favor of making Rule 16.1 mandatory, those against it, and those who would be fine with a mandatory rule if it were modified in certain ways. Those in favor stated that a mandatory Rule 16.1 would prevent the procedure from becoming irrelevant by increasing its use and counteracting the status quo bias. Said one attorney: "People find any reason to opt out." The idea is that the public would ultimately benefit, as it would make the court system more accessible.

A distinct group of attorneys would be in favor of a mandatory Rule 16.1 if certain improvements were made. They offered the following suggestions for modification:

- Allow depositions of parties.
- Treat attorney fees similarly to costs.
- Provide a mechanism for discovery or exclusion from the rule for good cause shown.
- Clarify the witness disclosure requirement.

Those against a mandatory rule do not believe it would solve any problems and, in fact, believe that it would further prevent people from using the courts. These individuals place a high value on flexibility and the exercise of judgment by legal professionals, describing the rule as too rigid: "You can always think of a case in which the dollar amount isn't that high…but there is more at stake for the client." An attorney characterized Rule 16.1 as "a different form of justice," which should not be mandated. A judge, who does believe that drastic changes need to be made to the system, stated that "going back to trial by ambush and taking informational tools away" is not the solution.

One attorney emphasized that, because it is not just about which procedure is used but also about a restriction on recovery, a mandatory rule would "violate the constitutional right to have damages determined by a jury." This attorney believes that caps on losses are fundamentally wrong, and cannot be mandated by the court.

Attorneys and judges alike discussed the practical difficulties associated with making Rule 16.1 mandatory, as it is based upon the plaintiff's representation. One attorney stated: "With a verbal threshold, [a mandatory rule] would be next to impossible." Interviewees have both witnessed and engaged in "puffing" claims. Even if parties were required to justify the amount to the court, one judge stated: "Someone can pretty much always present an argument—either legitimate or concocted—that the damages are higher." One suggestion offered would be to allow opting out only by stipulation rather than unilaterally because even if both parties frequently stipulate not to be governed by the rule, "at least they would be required to communicate and reach a consensus early in the case."

7. Colorado's Civil Procedure

A. A Complicated "Simplified" Process

Some attorneys we interviewed observed that the ostensibly simplified procedure is too long and complicated. For example, one commercial business litigator noted with surprise how few attorneys actually read, understand, and follow the rule. A plaintiff will elect to use the rule and then seek discovery by sending out interrogatories and deposition notices. Another attorney admitted that he did not appreciate the burden to disclose more than generalized information in his first Rule 16.1 case. A third stated during the interview that there is no difference between the disclosure requirements of Rule 16.1 and the standard procedure.

Confusion is also evident from the differing interpretations of the cases to which the rule applies. For example, one attorney urged rewriting the rule to clearly reflect that all cases for injunctive relief are included. Another stated that

most construction lawyers have interpreted the rule to exclude mechanic's lien cases as an "expedited proceeding." He considers this a failing of the rule because very often those cases are within the monetary limit and are very simple. Some interviewees, even those who employ the rule often, expressed surprise that the parties could stipulate to use the rule in higher value cases.

B. Interplay with County Court

One attorney stated that he will not advise a client to litigate a case in district court for less than $100,000 because it is a "high stakes game." Indeed, for many lower value cases, attorneys elect to use county court instead, even if the claim exceeds the $15,000 jurisdictional limit. With an estimated $10,000 cost difference between litigating in county court and district court, one attorney stated that "even if it's a $20,000 case, the client may benefit from being in county court." While it may be more "fly by the seat of your pants," the simplicity of bringing cases in the lower court appears to be working well. Litigants have a trial within 30 to 60 days, without incurring deposition costs.

In fact, there is some sentiment among those interviewed that increasing county court jurisdiction is a better solution than implanting a separate simplified procedure into district court. One attorney cited "unused capacity" in Colorado's county courts, while another acknowledged that more county court judges would need to be appointed.

C. The State's Rules Regime

Regarding the rules in general, interviewees expressed significant dissatisfaction with the following: 1) different sets of rule for different cases and 2) constant rules changes.

With respect to the former issue, there is a concern about the burden of having too many complicated rules schemes ("the rules book is two inches thick"). In addition to the energy consumed by tracking differing obligations and deadlines, it is sometimes difficult to know how the different schemes interact within a particular case. This issue has only been exacerbated with the introduction of the "Colorado Civil Access Pilot Project Applicable to Business Actions in District Court."[57] Practitioners would like to see one simple and complete set of rules, flexible enough to provide an appropriate level of process in every case. One interviewee professed to opting out of Rule 16.1 for the purpose of achieving a comfortable "rhythm" in his practice. Judges agree that "having two tracks is difficult."

With respect to the latter issue, there is concern that frequent rules changes make litigation more uncertain and complex, which ultimately makes it more expensive and decreases access. If lawyers and judges understand and are comfortable with a system, they can appropriately advise and navigate litigants through that system.

D. Suggested Changes

While the interviews were focused on Rule 16.1, some individuals were eager to discuss the Colorado Civil Access Pilot Project ("CAPP"). There were differing opinions on the merits and drawbacks of that set of rules, and all judgment ought to be reserved pending completion of the project at the end of 2013 and a comprehensive evaluation of the results. Nevertheless, for the purpose of the Rule 16.1 study, it is important to note that there is significant support among those interviewed for the idea of taking the best from Rule 16.1 and the best from CAPP, and consolidating those provisions into one set of flexible civil rules applicable to all actions in district court. This is seen as preferable to maintaining (and constantly changing) separate rules for different kinds of cases.

[57] Supreme Court of Colorado, Chief Justice Directive 11-02 (amended Oct. 2011). Information on the pilot project is currently located on the Colorado Judicial Branch website: http://www.courts.state.co.us/Courts/Civil_Rules.cfm.

With respect to Rule 16.1, interviewees provided the following feedback for improvement:

- Treat attorney fees similarly to costs for the purpose of calculating the limit. One attorney stated that excluding attorney fees would, paradoxically, have the effect of lowering them.

- Clarify the witness testimony disclosure requirements, and limit those requirements to expected direct testimony and exclude rebuttal testimony, so parties can adequately address issues on cross-examination.

- Allow a very limited amount of standard default discovery in Rule 16.1 cases.

Acknowledging that the cost of litigation is "outrageous," some interviewees believe that the best way to improve outcomes for individuals would be to focus on increasing judicial resources. Having more judges will allow for better case management and better enforcement of appropriate conduct. "Any time the judge takes an immediate interest and control in the case, it is better for the case. But the court taking control of the case is what will help, not a bunch of rules." These attorneys believe that if rules replace the exercise of an attorney's professional judgment and customized case management, the system becomes a "cookie cutter" processor of claims rather than people. "One of the benefits of our justice system is that it is a human system addressing human needs. If the restrictions are too great, that will be lost."

VII. CONCLUSION

It is hoped that this study will provide a rich source of data to inform the rulemaking process, both in Colorado and in jurisdictions around the country that seek to formulate a set of rules that will better ensure the "just, speedy, and inexpensive" determination of all civil actions. We encourage you to contact IAALS for additional information, studies, and models aimed at the continuous improvement of the civil justice system.

APPENDIX A

Source: COLO. R. CIV. P 16.1 (2011). The time limits in the rule were amended effective January 1, 2012 to reflect a new "rule of 7s" time standard. The former version is reflected here, as that is the version that pertains to the evaluation.

RULE 16.1. SIMPLIFIED PROCEDURE FOR CIVIL ACTIONS

(a) Purpose and Summary of Simplified Procedure.

(1) Purpose of Simplified Procedure. The purpose of this rule is to provide maximum access to the district courts in civil actions; to enhance the provision of just, speedy, and inexpensive determination of civil actions; to provide the earliest practical trials; and to limit discovery and its attendant expense.

(2) Summary of Simplified Procedure. Under this Rule, Simplified Procedure generally applies to all civil actions, whether for monetary damages or any other form of relief unless expressly excluded by this Rule or the pleadings, or unless a party timely and properly elects to be excluded from its provisions. This Rule normally limits the maximum allowable monetary judgment to $100,000 against any one party. This Rule requires early, full disclosure of persons, documents, damages, insurance and experts, and early, detailed disclosure of witnesses' testimony, whose direct trial testimony is then generally limited to that which has been disclosed. Normally, no depositions, interrogatories, document requests or requests for admission are allowed, although examination under C.R.C.P. 34(a)(2) and 35 is permitted.

(b) Actions Subject to Simplified Procedure. This Rule applies to all civil actions other than:

(1) civil actions that are class actions, domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, C.R.C.P. 106 and 120, or other similar expedited proceedings, unless otherwise stipulated by the parties; or

(2) civil actions in which any party seeks a monetary judgment from any other party of more than $100,000, exclusive of interest and costs.

(3) Each pleading containing an initial claim for relief in a civil action, other than a domestic relations, probate, water, juvenile, or mental health action, shall be accompanied by a completed Civil Cover Sheet in the form and content of Appendix to Chapters 1 to 17, Form 1.2 (JDF 601), at the time of filing. Failure to file the cover sheet shall not be considered a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

(c) Limitations on Damages. In cases subject to this Rule, a claimant's right to a monetary judgment against any one party shall be limited to a maximum of $100,000, including any attorney fees, penalties or punitive damages, but excluding interest and costs. The $100,000 limitation shall not restrict an award of non-monetary relief. The jury shall not be informed of the $100,000 limitation. If the jury returns a verdict for damages in excess of $100,000, the trial court shall reduce the verdict to $100,000.

(d) Election for Exclusion from This Rule. This Rule shall apply unless, no later than 45 days after the case is at issue as defined in C.R.C. P. 16(b)(1), any party files a written notice, signed by the party and its counsel, if any, stating that the party elects to be excluded from the application of Simplified Procedure, set forth in this rule 16.1. The use of a "Notice to Elect Exclusion From C.R.C.P. 16.1 Simplified Procedure" in the form and

content of Appendix to Chapters 1 to 17, Form 1.3 (JDF 602), shall comply with this section. In the event a notice is filed, C.R.C.P. 16 shall govern the action.

(e) Election for Inclusion Under This Rule. In actions excluded by subsection (b)(2) of this Rule, within 49 days after the case is at issue, as defined in C.R.C.P. 16(b)(1), the parties may file a stipulation to be governed by this Rule. In such event, they will not be bound by the $100,000 limitation on judgments contained in section (c) of this Rule.

(f) Case Management Orders. In actions subject to Simplified Procedure pursuant to this Rule, the presumptive case management order requirements of C.R.C.P. 16(b)(1), (2), (3), (5) and (6) shall apply.

(g) Trial Setting. No later than 40 days after the case is at issue, the responsible attorney shall set the case for trial pursuant to C.R.C.P. 121, section 1-6, unless otherwise ordered by the court.

(h) Certificate of Compliance. No later than 45 days after the case is at issue, the responsible attorney shall also file a Certificate of Compliance stating that the parties have complied with all the requirements of sections (f) and (g) of this Rule or, if they have not complied with each requirement, shall identify the requirements which have not been fulfilled and set forth any reasons for the failure to comply.

(i) Expedited Trials. Trial settings, motions and trials in actions subject to Simplified Procedure under this Rule should be given early trial settings, hearings on motions and trials.

(j) Case Management Conference. If any party believes that it would be helpful to conduct a case management conference, a notice to set case management conference shall be filed stating the reasons why such a conference is requested. If any party is unrepresented or if the court determines that such a conference should be held, the court shall set a case management conference. The conference may be conducted by telephone.

(k) Simplified Procedure. Simplified Procedure means that the action shall not be subject to C.R.C.P. 16, 26-33, 34(a)(1), 34(c) and 36, unless otherwise specifically provided in this Rule, and shall be subject to the following requirements:

(1) Required Disclosures.

(A) Disclosures in All Cases. Each party shall make disclosures pursuant to C.R.C.P. 26(a)(1), 26(a)(4), 26(b)(5), 26(c), 26(e) and 26(g), no later than 30 days after the case is at issue as defined in C.R.C.P. 16(b)(1). In addition to the requirements of C.R.C.P. 26(g), the disclosing party shall sign all disclosures under oath.

(B) Additional Disclosures in Certain Actions. Even if not otherwise required under subsection (A), matters to be disclosed pursuant to this Rule shall also include, but are not limited to, the following:

(i) ***Personal Injury Actions*****.** In actions claiming damages for personal or emotional injuries, the claimant shall disclose the names and addresses of all doctors, hospitals, clinics, pharmacies and other health care providers utilized by the claimant within five years prior to the date of injury, and shall produce all records from those providers or written waivers allowing the opposing party to obtain those records subject to appropriate protective provisions authorized by C.R.C.P. 26(c). The claimant shall also produce transcripts or tapes of recorded statements, documents, photographs, and video and other recorded images that address the facts of the case or the injuries sustained. The defending party shall disclose transcripts or tapes of recorded statements, any insurance company claims memos or documents, photographs, and video and other recorded images that address the facts of the case, the injuries sustained, or affirmative defenses. A party need not produce those

specific records for which the party, after consultation pursuant to C.R.C.P. 26(c), timely moves for a protective order from the court;

(ii) ***Employment Actions.*** In actions seeking damages for loss of employment, the claimant shall disclose the names and addresses of all persons by whom the claimant has been employed for the ten years prior to the date of disclosure and shall produce all documents which reflect or reference claimant's efforts to find employment since the claimant's departure from the defending party, and written waivers allowing the opposing party to obtain the claimant's personnel files and payment histories from each employer, except with respect to those records for which the claimant, after consultation pursuant to C.R.C.P. 26(c), timely moves for a protective order from the court. The defending party shall produce the claimant's personnel file and applicable personnel policies and employee handbooks;

(iii) ***Requested Disclosures.*** Before or after the initial disclosures, any party may make a written designation of specific information and documentation that party believes should be disclosed pursuant to C.R.C.P. 26(a)(1). The other party shall provide a response and any agreed upon disclosures within 20 days of the request or at the time of initial disclosures, whichever is later. If any party believes the responses or disclosures are inadequate, it may seek relief pursuant to C.R.C.P. 37.

(C) Document Disclosure. Documents and other evidentiary materials disclosed pursuant to C.R.C.P. 26(a)(1) and 16.1(k)(1)(B) shall be made immediately available for inspection and copying to the extent not privileged or protected from disclosure.

(2) Disclosure of Expert Witnesses. The provisions of C.R.C.P. 26(a)(2)(A) and (B), 26(a)(4), 26(a)(6), 26(c), 26(e) and 26(g) shall apply to disclosure for expert witnesses. Written disclosures of experts shall be served by parties asserting claims 90 days before trial; by parties defending against claims 60 days before trial; and parties asserting claims shall serve written disclosures for any rebuttal experts 35 days before trial.

(3) Disclosure of Non-expert Trial Testimony. Each party shall serve written disclosure statements identifying the name, address, telephone number, and a detailed statement of the expected testimony for each witness the party intends to call at trial whose deposition has not been taken, and for whom expert reports pursuant to subparagraph (k)(2) of this Rule have not been provided. For adverse party or hostile witnesses, written disclosure of the expected subject matters of the witness's testimony, rather than a detailed statement of the expected testimony, shall be sufficient. Written disclosure shall be served by parties asserting claims 90 days before trial; by parties defending against claims 60 days before trial; and parties asserting claims shall serve written disclosures for any rebuttal witnesses 35 days before trial.

(4) Depositions of Witnesses in Lieu of Trial Testimony. A party who intends to offer the testimony of an expert or other witness may, pursuant to C.R.C.P. 30(b)(1)-(4), take the deposition of that witness for the purpose of preserving the witness' testimony for use at trial. Such a deposition shall be taken at least 5 days before trial. In that event, any party may offer admissible portions of the witness' deposition, including any cross-examination during the deposition, without a showing of the witness' unavailability. Any witness who has been so deposed may not be offered as a witness to present live testimony at trial by the party taking the deposition.

(5) Depositions for Obtaining Documents. Depositions also may be taken for the sole purpose of obtaining and authenticating documents from a non-party.

(6) Trial Exhibits. All exhibits to be used at trial which are in the possession, custody or control of the parties shall be identified and exchanged by the parties at least 30 days before trial. Authenticity of all identified and exchanged exhibits shall be deemed admitted unless objected to in writing within 10 days after receipt of the

exhibits. Documents in the possession, custody and control of third persons that have not been obtained by the identifying party pursuant to document deposition or otherwise, to the extent possible shall be identified 30 days before trial and objections to the authenticity of those documents may be made at any time prior to their admission into evidence.

(7) Limitations on Witnesses and Exhibits at Trial. In addition to the sanctions under C.R.C.P. 37(c), witnesses and expert witnesses whose depositions have not been taken shall be limited to testifying on direct examination about matters disclosed in reasonable detail in the written disclosures, provided, however, that adverse parties and hostile witnesses shall be limited to testifying on direct examination to the subject matters disclosed pursuant to subparagraph (k)(3) of this Rule. However, a party may call witnesses for whom written disclosures were not previously made for the purpose of authenticating exhibits if the opposing party made a timely objection to the authenticity of such exhibits.

(8) Juror Notebooks and Jury Instructions. Counsel for each party shall confer about items to be included in juror notebooks as set forth in C.R.C.P. 47(t). At the beginning of trial or at such other date set by the court, the parties shall make a joint submission to the court of items to be included in the juror notebook. Jury instructions and verdict forms shall be prepared pursuant to C.R.C.P. 16(g).

(9) Voluntary Discovery. In addition to the disclosures required by this Rule, voluntary discovery may be conducted as agreed to by all the parties. However, the scheduling of such voluntary discovery may not serve as the basis for a continuance of the trial, and the costs of such discovery shall not be deemed to be actual costs recoverable at the conclusion of the action. Disputes relating to such agreed discovery may not be the subject of motions to the court. If a voluntary deposition is taken, such deposition shall not preclude the calling of the deponent as a witness at trial.

(l) Changed Circumstances. In a case governed by this Rule, any time prior to trial, upon a specific showing of substantially changed circumstances sufficient to render the application of Simplified Procedure under this Rule unfair and a showing of good cause for the timing of the motion to terminate, the court shall terminate application of this Rule and enter such orders as are appropriate under the circumstances.

APPENDIX B

Source: Richard P. Holme, *Just, Speedy, and Inexpensive: Possible Simplified Procedure for Cases Under $100,000*, 29 Colo. Law. 5, Appendix (March 2000).

RULE 1.1 SIMPLIFIED PROCEDURE FOR CERTAIN ACTIONS

(a) Actions Subject to Simplified Procedure.

(1) In order to provide maximum access to the district courts in civil actions; to enhance the provision of just, speedy, and inexpensive determination of civil actions; to provide the earliest practical trials; and to limit discovery and its attendant expense, simplified procedure as defined in this Rule 1.1 shall govern civil actions in the district court in which no plaintiff, counterclaim plaintiff, cross-claim plaintiff or third-party plaintiff seeks money damages from any one party of more than $100,000.00 inclusive of any statutory or contractual attorney fees, penalties or punitive damages, but exclusive of interest and costs. Operation under this Rule shall limit the claimant's right to recover money damages from any one party to a maximum of $100,000.00 inclusive of any statutory or contractual attorney fees, penalties or punitive damages, but exclusive of interest and costs.

(2) This Rule shall not apply if, no later than 15 days after the case is at issue as defined in the first paragraph of C.R.C.P. 16(b):

(A) A claimant files a certification with the court that it has filed a claim against at least one other party in the case which exceeds $100,000.00 inclusive of any statutory or contractual attorney fees, penalties or punitive damages, but exclusive of interest and costs; or

(B) A party files a written statement signed by both the party and its counsel reflecting that the option and potential benefit of this Rule have been discussed and that the party believes that application of simplified procedure would not further the interests of a just, speedy and inexpensive determination of the action and further reflecting that this belief has been discussed with the other parties or their counsel.

(3) This Rule shall not apply to actions brought pursuant to C.R.C.P. 23, 23.1 and 23.2, domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, C.R.C.P. 120, or other expedited proceedings, unless otherwise stipulated by the parties.

(4) Parties with claims over $100,000.00 may mutually stipulate to be governed by this Rule, but they will not be bound by the $100,000.00 limitation on damages.

(b) Expedited Trials. Trial settings, motions and trials in actions subject to simplified procedure under this Rule should be given early trial settings, motions and trials.

(c) Simplified Procedure. Simplified procedure means that the action shall not be subject to C.R.C.P. 16, 26-34 and 36, unless otherwise specifically provided in this Rule, and shall be subject to the following requirements:

(1) ***Required Disclosures.***

(A) Each party shall make disclosures pursuant to C.R.C.P. 26(a)(1), 26(a)(4), 26(a)(6), 26(c), 26(e) and 26(g), no later than 30 days after the case is at issue as defined in the first paragraph of C.R.C.P. 16(b). In addition to the requirements of C.R.C.P. 26(g), all disclosures shall be signed under oath by the disclosing party.

(B) Even if not otherwise required under subsection (A), matters to be disclosed pursuant to this Rule shall also include, but are not limited to, the following:

(i) In actions claiming damages for personal or emotional injuries, the claimant shall disclose the names and addresses of all doctors, hospitals, clinics, pharmacies and other health care providers utilized by the claimant within ten years prior to the date of disclosure, and shall produce all records from those providers or written waivers allowing the opposing party to obtain those records. The claimant shall also produce documents, photographs, and transcripts or tapes of recorded statements that address the facts of the case or the injuries sustained. The defending party shall disclose any insurance company claims memos or documents, photographs, and transcripts or tapes of recorded statements that address the facts of the case, the injuries sustained, or affirmative defenses. A party need not produce those specific records for which the party, after consultation pursuant to C.R.C.P. 121, section 1-15(8), seeks and obtains a protective order from the court;

(ii) In actions seeking damages for loss of employment, the claimant shall disclose the names and addresses of all persons by whom the claimant has been employed for the ten years prior to the date of disclosure and shall produce all documents which reflect or reference claimant's efforts to find employment since the claimant's departure from the defending party, and written waivers allowing the opposing party to obtain the claimant's personnel files and payment histories from each employer, except with respect to those records for which the claimant, after consultation pursuant to C.R.C.P. 121, section 1-15(8), seeks and obtains a protective order from the court. The defending party shall produce the claimant's personnel file;

(iii) Before or after the initial disclosures, any party may make a written designation of specific information and documentation which that party believes should be disclosed pursuant to C.R.C.P. 26(a)(1). The other party shall provide a response and any agreed upon disclosures within 20 days of the request or at the time of initial disclosures, whichever is later. If any party believes the responses are inadequate, it may seek relief pursuant to C.R.C.P. 37.

(C) Documents and other evidentiary materials disclosed pursuant to C.R.C.P. 26(a)(1)(B) and 1.1(c)(1)(B) shall be made available for inspection and copying pursuant to C.R.C.P. 34 to the extent not privileged or protected from disclosure.

(2) ***Disclosure of Expert Witnesses.*** The provisions of C.R.C.P. 26(a)(2)(A) and (B), 26(a)(4), 26(a)(6), 26(c), 26(e) and 26(g) shall apply to disclosure for expert witnesses. Written disclosures of experts shall be served by parties asserting claims 90 days before trial; by parties defending against claims 60 days before trial; and parties asserting claims shall serve written disclosures for any rebuttal experts 45 days before trial.

(3) ***Disclosure of Trial Testimony.*** Each party shall serve written disclosure statements identifying the name, address, telephone number, and a detailed statement of the expected testimony for each witness the party intends to call at trial whose deposition has not been taken. For adverse party or hostile witnesses, written disclosure of the expected subject matters of the witness's testimony, rather than a detailed statement of the expected testimony, shall be sufficient. Written disclosure shall be served by parties asserting claims 90 days before trial; by parties defending against claims 60 days before trial; and parties asserting claims shall serve written disclosures for any rebuttal witnesses 45 days before trial.

(4) ***Depositions of witnesses in lieu of trial testimony.*** A party who intends to offer the testimony of an expert or other witness may, pursuant to C.R.C.P. 30(b)(1)-(4), take the deposition of that witness for the purpose of preserving the witness' testimony for use at trial. Such a deposition shall be taken at least 5 days before trial. In that event, admissible portions of the witness' deposition, including any cross-examination during the deposition, may be

offered at trial by any party without a showing of the witness' unavailability. Any witness who has been so deposed may not be offered as a witness to present live testimony at trial.

(5) ***Depositions for obtaining documents.*** Depositions upon oral or written examination also may be taken for the sole purpose of obtaining documents not accessible to a party.

(6) ***Trial Exhibits.*** All exhibits to be used at trial which are in the possession, custody or control of the parties shall be identified and exchanged by the parties 30 days before trial. Authenticity of all identified and exchanged exhibits shall be deemed admitted unless objected to in writing 20 days before trial. Documents in the possession, custody and control of third persons which have not been obtained by the identifying party pursuant to document deposition or otherwise shall be identified to the extent possible 30 days before trial and objections to the authenticity of those documents may be made at any time prior to their admission into evidence.

(7) ***Limitations on witnesses and exhibits at trial.*** In addition to the sanctions under C.R.C.P. 37(c), all witnesses and expert witnesses whose depositions have not been taken, except adverse party and hostile witnesses, shall be limited to testifying on direct examination about matters disclosed in reasonable detail in the written disclosures. Adverse party and hostile witnesses shall be limited to testifying on direct examination to the subject matters disclosed pursuant to subparagraph (c)(3) of this Rule. However, a party may call witnesses for whom written disclosures were not previously made for the purpose of authenticating exhibits if a timely objection to the authenticity of such exhibits was made by the opposing party.

(8) ***Juror Notebooks and Jury Instructions.*** Counsel for each party shall confer about items to be included in juror notebooks as set forth in C.R.C.P. 47(t). At the beginning of trial or at such other date set by the court, the parties shall make a joint submission to the court of items to be included in the juror notebook. Jury instructions and verdict forms shall be prepared pursuant to C.R.C.P. 16(d).

(9) ***Voluntary Discovery.*** In addition to the disclosures required by this Rule, voluntary discovery may be conducted as agreed to by all the parties. However, the scheduling of such voluntary discovery may not serve as the basis for a continuance of the trial, and the costs of such discovery shall not be deemed to be actual costs recoverable at the conclusion of the action. Disputes relating to such agreed discovery may not be the subject of motions to the court. If a voluntary deposition is taken, such deposition shall not preclude the calling of the deponent as a witness at trial.

APPENDIX C

A. IMPACT ANALYSIS MODELING APPROACH

1. Case Duration

To test the impact of Rule 16.1 on the duration measures (time to resolution and time to final event), the Cox Proportional Hazard model was employed. While a parametric model would assume that the case duration data have an approximately normal distribution,[58] the Cox model makes no assumption about the distribution of the baseline timing data. As a result, the model examines the data only in relative terms, as ordered events of interest, rather than in terms of a count of days, weeks, or months for case length. While this avoids errors created by false assumptions, the lack of a standardized period of time prevents length of case prediction estimates for the Rule 16.1 and non-Rule 16.1 groups. The data charts in Appendix D show both the coefficient estimates and the hazard ratios. The hazard rate is the probability that an event will occur at a particular time to a particular subject, given that the event has not yet occurred. As employed in this study, it provides the probability that a case will end at a particular time, and estimates the rate of case closure in Rule 16.1 cases as compared to opt-out cases. In order to convert the raw coefficients from the hazard model into hazard ratios, the following equation was used: $h(t) = \exp(\beta X)$, where $h(t)$ is the hazard ratio, β is a coefficient associated with a variable in the model, and X denotes the value of interest associated with that variable. Please note that for each control variable, the numbers are relative to the omitted reference category rather than absolute.

2. Number of Motions and Court Appearances

To test the impact of Rule 16.1 on the count measures (number of motions and number of court appearances), a negative binomial regression model was employed. The data charts in Appendices E and F show the coefficients obtained in the model. It should be noted that the coefficients do not directly reflect the percentage differences in number of motions reported, as those differences were estimated from the negative binomial regression after running the models. To estimate the percent change in the expected count from the coefficients, the following equation was used: $100 * [\exp(\beta_k * \delta) - 1]$[9], where β is the coefficient associated with a variable in the model and δ represents the specified change in the value of the variable. For example, when we look at the percent change in the expected motion count for cases that proceeded under Rule 16.1, the value of δ is equal to 1, given that the Rule 16.1 variable was coded as 1, denoting that the case proceeded under the rule. Please note that for each control variable, the numbers are relative to the omitted reference category rather than absolute.

[58] When data points are displayed visually in a graph, a "normal" distribution creates a symmetrical bell-shaped curve with most cases forming a central peak at the mean and fewer cases at either extreme.

APPENDIX D

*Standard errors in parentheses, *** p<0.01, ** p<0.05, * p<0.10*

CHART D1

INITIAL PILOT PROJECT: IMPACT ON TIME TO RESOLUTION

	Baseline Model	Cluster on Case Type	*Baseline Model Hazard Ratios*	*Cluster on Case Type Hazard Ratios*
Rule 16.1	0.737***	0.737***	2.089***	2.089***
	(0.093)	(0.106)	(0.195)	(0.221)
Number of Plaintiffs	-0.142**	-0.142***	0.868**	0.868***
	(0.059)	(0.031)	(0.051)	(0.027)
Number of Defendants	-0.056**	-0.056***	0.946**	0.946***
	(0.022)	(0.015)	(0.021)	(0.014)
Default Judgment	1.105***	1.105***	3.020***	3.020***
	(0.153)	(0.288)	(0.461)	(0.870)
Case Dismissed	0.213*	0.213	1.237*	1.237
	(0.115)	(0.146)	(0.142)	(0.181)
Adams County	-0.621***	-0.621***	0.537***	0.537***
	(0.100)	(0.101)	(0.054)	(0.054)
2002	-0.274***	-0.274**	0.761***	0.761**
	(0.090)	(0.129)	(0.069)	(0.098)
2004	-0.096	-0.096	0.908	0.908
	(0.120)	(0.077)	(0.109)	(0.070)
Observations	690	690	690	690

CHART D2

INITIAL PILOT PROJECT: IMPACT ON TIME TO FINAL EVENT

	Baseline Model	Cluster on Case Type	*Baseline Model Hazard Ratios*	*Cluster on Case Type Hazard Ratios*
Rule 16.1	0.530***	0.530***	1.699***	1.699***
	(0.094)	(0.123)	(0.160)	(0.209)
Number of Plaintiffs	-0.103*	-0.103***	0.902*	0.902***
	(0.057)	(0.039)	(0.052)	(0.035)
Number of Defendants	-0.028	-0.028**	0.972	0.972**
	(0.018)	(0.012)	(0.018)	(0.012)
Default Judgment	-0.012	-0.012	0.988	0.988
	(0.148)	(0.166)	(0.146)	(0.164)
Case Dismissed	0.514***	0.514***	1.671***	1.671***
	(0.116)	(0.146)	(0.194)	(0.245)
Adams County	-0.135	-0.135	0.874	0.874
	(0.102)	(0.198)	(0.089)	(0.173)
2002	0.011	0.011	1.011	1.011
	(0.089)	(0.118)	(0.090)	(0.120)
2004	-0.061	-0.061	0.941	0.941
	(0.120)	(0.066)	(0.113)	(0.062)
Observations	691	691	691	691

CHART D3

CASES CLOSED 2010: IMPACT ON TIME TO RESOLUTION

	Baseline Model	Cluster on Case Type	Case Type Dummies	Controlling for County
Rule 16.1	0.574***	0.574***	0.295*	0.266
	(0.133)	(0.200)	(0.156)	(0.163)
Number of Plaintiffs	-0.134*	-0.134	-0.120	-0.112
	(0.078)	(0.095)	(0.078)	(0.075)
Number of Defendants	-0.025	-0.025	0.013	-0.005
	(0.057)	(0.074)	(0.061)	(0.064)
Indigence	-0.256	-0.256*	-0.134	-0.070
	(0.268)	(0.138)	(0.273)	(0.296)
Case Type				
Tort			-0.339*	-0.546***
			(0.195)	(0.206)
Property disputes			0.170	0.307
			(0.376)	(0.393)
Employment/business disputes			0.211	0.274
			(0.298)	(0.305)
Enforcement			0.119	0.463
			(0.475)	(0.531)
Clerical			0.892*	1.062*
			(0.525)	(0.561)
Credit card/revolving credit debt collection			0.652***	0.599**
			(0.209)	(0.235)
Motor vehicle accident			-0.320*	-0.436**
			(0.183)	(0.192)
Title actions			-0.254	-0.493
			(0.401)	(0.419)
Undetermined case type			0.199	0.205
			(0.377)	(0.472)
Method of Resolution				
Default Judgment	0.608*	0.608*	0.572*	0.399
	(0.332)	(0.320)	(0.335)	(0.372)
Case Dismissed	-0.150	-0.150*	-0.076	-0.090
	(0.145)	(0.087)	(0.151)	(0.160)
Party Type				
Plaintiff - Insurance	0.034	0.034	0.284	0.255
	(0.343)	(0.315)	(0.351)	(0.378)
Defense - Insurance	0.126	0.126	0.150	-0.085
	(0.277)	(0.226)	(0.284)	(0.290)
Observations	294	294	294	294

CHART D4

CASES CLOSED 2010: IMPACT ON TIME TO RESOLUTION—HAZARD RATIOS

	Baseline Model	Cluster on Case Type	Case Type Dummies	Controlling for County
Rule 16.1	1.775***	1.775***	1.343*	1.304
	(0.235)	(0.356)	(0.209)	(0.212)
Number of Plaintiffs	0.874*	0.874	0.887	0.894
	(0.068)	(0.083)	(0.069)	(0.067)
Number of Defendants	0.976	0.976	1.013	0.995
	(0.056)	(0.072)	(0.061)	(0.064)
Indigence	0.774	0.774*	0.875	0.932
	(0.208)	(0.107)	(0.239)	(0.275)
Case Type				
Tort			0.712*	0.579***
			(0.139)	(0.119)
Property disputes			1.185	1.360
			(0.446)	(0.535)
Employment/business disputes			1.234	1.315
			(0.368)	(0.401)
Enforcement			1.126	1.589
			(0.535)	(0.843)
Clerical			2.441*	2.891*
			(1.282)	(1.621)
Credit card/revolving credit debt collection			1.919***	1.820**
			(0.402)	(0.428)
Motor vehicle accident			0.726*	0.647**
			(0.133)	(0.124)
Title actions			0.775	0.611
			(0.311)	(0.256)
Undetermined case type			1.220	1.228
			(0.460)	(0.579)
Method of Resolution				
Default Judgment	1.837*	1.837*	1.771*	1.491
	(0.610)	(0.588)	(0.592)	(0.555)
Case Dismissed	0.861	0.861*	0.927	0.914
	(0.125)	(0.075)	(0.140)	(0.147)
Party Type				
Plaintiff - Insurance	1.034	1.034	1.329	1.291
	(0.354)	(0.325)	(0.466)	(0.488)
Defense - Insurance	1.134	1.134	1.162	0.918
	(0.315)	(0.256)	(0.331)	(0.266)
Observations	294	294	294	294

CHART D5

CASES CLOSED 2010: IMPACT ON TIME TO FINAL EVENT

	Baseline Model	Cluster on Case Type	Case Type Dummies	Controlling for County
Rule 16.1	0.396***	0.396***	0.266*	0.354**
	(0.131)	(0.141)	(0.160)	(0.168)
Number of Plaintiffs	-0.117	-0.117**	-0.128*	-0.123
	(0.074)	(0.060)	(0.076)	(0.076)
Number of Defendants	-0.083	-0.083	-0.073	-0.097
	(0.059)	(0.067)	(0.063)	(0.067)
Indigence	-0.415	-0.415	-0.312	-0.312
	(0.269)	(0.260)	(0.281)	(0.286)
Case Type				
Tort			-0.164	-0.348
			(0.198)	(0.214)
Property disputes			-0.095	0.235
			(0.379)	(0.398)
Employment/business disputes			-0.114	-0.317
			(0.307)	(0.322)
Enforcement			0.412	0.819
			(0.491)	(0.526)
Clerical			1.145**	1.351**
			(0.527)	(0.549)
Credit card/revolving credit debt collection			0.141	0.234
			(0.212)	(0.222)
Motor vehicle accident			-0.108	-0.275
			(0.188)	(0.196)
Title actions			-0.447	-0.656
			(0.435)	(0.475)
Undetermined case type			-0.213	-0.147
			(0.380)	(0.492)
Method of Resolution				
Default Judgment	0.151	0.151	0.153	0.269
	(0.332)	(0.537)	(0.342)	(0.457)
Case Dismissed	0.203	0.203	0.205	0.244
	(0.144)	(0.158)	(0.154)	(0.164)
Party Type				
Plaintiff - Insurance	-0.078	-0.078	0.004	-0.091
	(0.342)	(0.386)	(0.360)	(0.386)
Defense - Insurance	0.020	0.020	0.017	-0.260
	(0.277)	(0.152)	(0.285)	(0.291)
Observations	294	294	294	294

CHART D6

CASES CLOSED 2010: IMPACT ON TIME TO FINAL EVENT—HAZARD RATIOS

	Baseline Model	Cluster on Case Type	Case Type Dummies	Controlling for County
Rule 16.1	1.487***	1.487***	1.304*	1.425**
	(0.194)	(0.210)	(0.209)	(0.239)
Number of Plaintiffs	0.890	0.890**	0.880*	0.885
	(0.066)	(0.053)	(0.067)	(0.067)
Number of Defendants	0.921	0.921	0.930	0.907
	(0.055)	(0.061)	(0.058)	(0.061)
Indigence	0.661	0.661	0.732	0.732
	(0.178)	(0.172)	(0.206)	(0.209)
Case Type				
Tort			0.849	0.706
			(0.168)	(0.151)
Property disputes			0.909	1.265
			(0.344)	(0.504)
Employment/business disputes			0.893	0.729
			(0.274)	(0.235)
Enforcement			1.510	2.268
			(0.742)	(1.193)
Clerical			3.143**	3.863**
			(1.657)	(2.122)
Credit card/revolving credit debt collection			1.151	1.263
			(0.244)	(0.281)
Motor vehicle accident			0.897	0.760
			(0.169)	(0.149)
Title actions			0.639	0.519
			(0.278)	(0.246)
Undetermined case type			0.808	0.863
			(0.307)	(0.425)
Method of Resolution				
Default Judgment	1.163	1.163	1.165	1.309
	(0.386)	(0.625)	(0.398)	(0.598)
Case Dismissed	1.225	1.225	1.227	1.277
	(0.176)	(0.193)	(0.189)	(0.209)
Party Type				
Plaintiff - Insurance	0.925	0.925	1.004	0.913
	(0.317)	(0.357)	(0.361)	(0.352)
Defense - Insurance	1.021	1.021	1.018	0.771
	(0.283)	(0.155)	(0.290)	(0.225)
Observations	294	294	294	294

APPENDIX E

*Standard errors in parentheses, *** p<0.01, ** p<0.05, * p<0.10*

CHART E1

INITIAL PILOT PROJECT: IMPACT ON NUMBER OF MOTIONS

	Baseline Model	Cluster on Case Type
Rule 16.1	-1.085***	-1.085***
	(0.097)	(0.083)
Number of Plaintiffs	0.217***	0.217***
	(0.054)	(0.065)
Number of Defendants	0.163***	0.163***
	(0.022)	(0.033)
Default Judgment	-0.012	-0.012
	(0.150)	(0.126)
Case Dismissed	-0.207**	-0.207
	(0.098)	(0.156)
Adams County	0.038	0.038
	(0.105)	(0.087)
2002	-0.002	-0.002
	(0.093)	(0.074)
2004	-0.060	-0.060
	(0.119)	(0.096)
Constant	0.872***	0.872***
	(0.161)	(0.150)
Observations	691	691

CHART E2

CASES CLOSED 2010: IMPACT ON NUMBER OF MOTIONS

	Baseline Model	Cluster on Case Type	Case Type Dummies	County Dummies
Rule 16.1	-0.606***	-0.606***	-0.518***	-0.465***
	(0.139)	(0.153)	(0.153)	(0.151)
Number of Plaintiffs	0.106	0.106***	0.086	0.081
	(0.068)	(0.039)	(0.066)	(0.065)
Number of Defendants	0.284***	0.284***	0.215***	0.213***
	(0.055)	(0.094)	(0.055)	(0.053)
Indigence	0.776***	0.776***	0.686***	0.661***
	(0.257)	(0.101)	(0.250)	(0.246)
Case Type				
Tort			0.300	0.373**
			(0.186)	(0.189)
Property disputes			0.003	-0.038
			(0.360)	(0.359)
Employment/business disputes			0.536**	0.568**
			(0.272)	(0.267)
Enforcement			-0.294	-0.494
			(0.466)	(0.477)
Clerical			0.105	0.159
			(0.541)	(0.532)
Credit card/revolving credit debt collection			-0.363*	-0.412*
			(0.221)	(0.220)
Motor vehicle accident			-0.379**	-0.334*
			(0.183)	(0.179)
Title actions			0.588*	0.622*
			(0.352)	(0.360)
Undetermined case type			-0.162	-0.295
			(0.404)	(0.445)
Method of Resolution				
Default Judgment	-0.083	-0.083	-0.079	-0.116
	(0.344)	(0.263)	(0.334)	(0.343)
Case Dismissed	-0.484***	-0.484**	-0.436***	-0.521***
	(0.142)	(0.191)	(0.144)	(0.143)
Party Type				
Plaintiff - Insurance	0.445	0.445*	0.621*	0.557*
	(0.337)	(0.269)	(0.341)	(0.339)
Defense - Insurance	-0.011	-0.011	0.130	0.296
	(0.283)	(0.127)	(0.276)	(0.277)
Constant	0.850***	0.850***	0.947***	0.557*
	(0.188)	(0.255)	(0.204)	(0.339)
Observations	294	294	294	294

APPENDIX F

*Standard errors in parentheses, *** p<0.01, ** p<0.05, * p<0.10*

CHART F1

INITIAL PILOT PROJECT: IMPACT ON NUMBER OF COURT APPEARANCES

	Baseline Model	Cluster on Case Type
Rule 16.1	-0.802***	-0.802***
	(0.185)	(0.130)
Number of Plaintiffs	0.241***	0.241**
	(0.079)	(0.096)
Number of Defendants	0.034	0.034
	(0.024)	(0.025)
Default Judgment	-2.002***	-2.002***
	(0.530)	(0.449)
Case Dismissed	-0.400**	-0.400***
	(0.166)	(0.115)
Adams County	0.420*	0.420*
	(0.226)	(0.224)
2002	0.280	0.280**
	(0.174)	(0.109)
2004	0.009	0.009
	(0.214)	(0.217)
Constant	-1.404***	-1.404***
	(0.277)	(0.258)
Observations	691	691

CHART F2

CASES CLOSED 2010: IMPACT ON NUMBER OF COURT APPEARANCES

	Baseline Model	Cluster on Case Type	Case Type Dummies	County Dummies
Rule 16.1	-0.338	-0.338	-0.370	-0.276
	(0.266)	(0.386)	(0.307)	(0.290)
Number of Plaintiffs	0.256**	0.256*	0.173	0.235**
	(0.120)	(0.136)	(0.126)	(0.101)
Number of Defendants	0.233**	0.233**	0.170	0.065
	(0.104)	(0.091)	(0.105)	(0.090)
Indigence	1.255***	1.255***	1.233***	1.156***
	(0.457)	(0.279)	(0.453)	(0.390)
Case Type				
Tort			-0.073	-0.360
			(0.377)	(0.369)
Property disputes			0.052	0.326
			(0.705)	(0.654)
Employment/business disputes			0.174	0.546
			(0.517)	(0.471)
Enforcement			0.746	1.243**
			(0.757)	(0.626)
Clerical			1.256	0.705
			(0.804)	(0.728)
Credit card/revolving credit debt collection			-1.588***	-2.250***
			(0.592)	(0.605)
Motor vehicle accident			-0.554	-0.634*
			(0.390)	(0.363)
Title actions			0.555	0.079
			(0.645)	(0.565)
Undetermined case type			0.690	-0.462
			(0.641)	(0.696)
Method of Resolution				
Default Judgment	0.218	0.218	0.361	0.518
	(0.646)	(0.440)	(0.627)	(0.596)
Case Dismissed	-0.233	-0.233	-0.164	-0.495*
	(0.273)	(0.328)	(0.291)	(0.268)
Party Type				
Plaintiff - Insurance	-0.028	-0.028	0.225	0.023
	(0.696)	(0.390)	(0.688)	(0.619)
Defense - Insurance	-0.711	-0.711*	-0.732	-0.127
	(0.702)	(0.399)	(0.702)	(0.674)
Constant	-1.248***	-1.248***	-0.943**	-1.043**
	(0.368)	(0.373)	(0.408)	(0.464)
Observations	294	294	294	294